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No. 08-1358

In The
Supreme Court of the United States

BRANDY AILEEN HOLMES,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Louisiana

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Brandy Holmes and Robert Coleman entered the Brandon home in rural Caddo Parish during the evening hours of New Year's Day 2003. After pushing their way into the front door of the Brandon residence, Julian Brandon, a retired Baptist preacher, was shot at near contact range under the chin with a .380 caliber handgun. The projectile separated into two pieces. One piece entered his brain, while the other piece exited the top of his head and was later recovered from the ceiling of the dining room adjacent to the front entryway. Julian Brandon collapsed. (Vol. 25, p. 5354, Vol. 26, p. 5528, Vol. 27, pp. 5642, 5674-5677, 5724-5733)

Mrs. Alice Brandon was taken to the rear bedroom and made to lie down. Alice Brandon was interrogated about her valuables and begged for her life. A pillow was placed over Mrs. Brandon's face, and she was shot in the head and left for dead. (Vol. 25, p. 5350, Vol. 27, p. 5731) The attention of the intruders was again focused on Reverend Brandon as they observed him struggling with his wounds, and they attacked Reverend Brandon a second time. At least three separate Chicago Cutlery style knives from the Brandon's kitchen were used in this second attack. Reverend Brandon received slashing cuts to his nose and face in addition to stabbing wounds on the top and rear of his head. The attack to the rear of Reverend Brandon's head was delivered with such force that one of the knives shattered; that knife was found in pieces at the scene. The offenders cut his

throat by multiple starting/stopping incisions starting from the front right, across the front of his neck and around to the back of his head. Reverend Brandon was repeatedly stabbed in the upper chest with wounds penetrating up to six inches, and was also stabbed in the back where a six-inch knife was found imbedded up to the handle. Reverend Brandon also had a large contusion from blunt force trauma on his forehead. (Vol. 26, pp. 5529-5534, Vol. 27, pp. 5734-5737)

Several days passed before the Brandons were discovered. A family friend, who missed the Brandons from regular phone contacts and attendance at morning and evening Sunday services went to the home and found the couple on January 5, 2003. (Vol. 25, p. 5345) Mrs. Brandon was still alive and was transported by helicopter to the hospital. (Vol. 25, pp. 5363-5365) Mrs. Brandon lived in a severely impaired state for almost six years as a result of the gunshot wound to the head, dying in October of 2008. (Vol. 28, pp. 5832-5838)

After the discovery of the crime scene, the Caddo Sheriff's Office investigation gained momentum with a call from persons at a nearby apartment complex. It was learned that shortly after New Year's Day Brandy Holmes was in a nearby apartment complex trying to sell jewelry and making statements about killing an old couple down the road by a church. (Vol. 25, pp. 5399-5400, 5405, Vol. 26, pp. 5480-5484) Detectives went to the Holmes' trailer, which was just around the corner from the homicide scene, and contacted Holmes, Coleman and other family members.

The group agreed to go to the detective office for interviews. Coleman denied involvement but displayed a cut on his right hand. (Vol. 26, pp. 5424-5428, 5484-5486, Vol. 27, pp. 5564, 5660) Holmes made several statements over the course of the next two days that implicated her and others as being involved in the homicide. (Vol. 26, pp. 5428-5433, 5504, 5508, 5516-5519, Vol. 27, pp. 5558-5561)

Holmes made at least six separate statements to authorities that related to the Brandon homicide. (Vol. 1, pp. 168-193, 250, Vol. 2, pp. 251-252, 363-461, 499, Vol. 3, pp. 508-522) In most of these statements, Holmes implicated herself and others to varying degrees. Of the four interviews that were taped, Holmes destroyed the one in which she unequivocally admitted her role as the shooter and active participant in all the events concerning both Reverend Brandon and Mrs. Brandon. Holmes destroyed this tape by sneaking it into the ladies' room and flushing the magnetic tape down the toilet, after substituting a blank tape in the stack of taped statements that had been left unsecured on a detective's desk. Investigators also noticed that after Holmes' bathroom visit, she was no longer wearing some of the jewelry they had observed earlier. (Vol. 26, pp. 5510-5514)

In all but her first interview with detectives, Holmes described various details of the homicide with great precision. She admitted that she had stolen her father's .380 handgun while visiting him in Mississippi. She repeatedly acknowledged her presence and involvement in the attack on the Brandons, and on

numerous occasions acknowledged her willingness to kill both Reverend and Mrs. Brandon. During her taped statements to Caddo deputies, Brandy Holmes admitted to bleaching her boots and burning her jacket stained with blood from Reverend Brandon's neck wound.

During her contact with investigators Holmes further revealed that on January 4, 2003, she took two of her nephews to view the bodies of Reverend Brandon and Mrs. Brandon. Her younger nephew later corroborated Holmes' account of this visit to the scene of the murder. The older nephew did not enter the residence, but Holmes' nine-year-old nephew went in with his aunt and saw Reverend Brandon lying in a pool of blood, and also heard Mrs. Brandon screaming from another room in the house. Holmes and her nephews were seen going to the Brandon residence together. The same witness observed the nephews hurriedly leaving the Brandon residence without their aunt. (Vol. 27, pp. 5614-5617)

The investigation revealed and the evidence showed a close link between Holmes and Coleman. Holmes and Coleman traveled from Mississippi, where they lived together as girlfriend and boyfriend, to Shreveport on Christmas Eve 2002. They were picked up by Holmes' mother and resided in her trailer while the couple was in Shreveport. They brought with them the .380 caliber handgun that belonged to Holmes' father. That handgun was determined to be the murder weapon both by Holmes' admission and by ballistics comparison of projectiles and shell

casings. (Vol. 26, pp. 5448-5459, Vol. 27, pp. 5674-5687)

The items that were known to have been stolen from the Brandon residence included jewelry, particularly a multi-colored bracelet, and bankcards. There was an attempt to use one of the Brandon's bankcards where an incorrect PIN was used at an ATM in a nearby convenience store. In addition, Holmes and Coleman were recorded minutes later and just up the street on a Hibernia bank surveillance video trying to use a bankcard, again with an incorrect PIN number. (Vol. 26, pp. 5462-5469, 5473-5476)

Many incriminating items were recovered from the Holmes' trailer where the two murderers had stayed. Among those items was a clear plastic food service glove found in the rain gutter of the trailer, containing a multi-colored bracelet and a pearl bracelet. (Vol. 26, pp. 5462-5468) Reverend Brandon's daughter identified the multi-colored bracelet as one she had given her mother some time earlier. (Vol. 26, pp. 5473-5476) A box of Subway food service gloves was recovered from the bedroom shared by Coleman and Holmes. (Vol. 26, p. 5489) The food service gloves had a diamond pattern consistent with patterns in blood transfer stains observed at the Brandon residence. (Vol. 27, pp. 5659, 5634) Additionally, a pillow was found in Holmes' bedroom with a bullet hole through it. (Vol. 26, pp. 5489-5494) That pillow was not the one used to cover Mrs. Brandon's face when she was shot, but was apparently a "practice" pillow.

In the same rain gutter that contained the multi-colored bracelet, three fired .380 cartridge casings were found. (Vol. 26, pp. 5462-5468) Investigators went to Holmes' father's residence in Mississippi. There her father took detectives to a location where he had fired the .380 handgun that was discovered missing at the time of Coleman and Holmes' departure from Mississippi. (Vol. 26, p. 5455) One of the cartridge casings found in the gutter was matched to a .380 cartridge casing recovered from that location in Mississippi. (Vol. 27, pp. 5684-5687) During analysis at the crime lab, Reverend Brandon's DNA was found on a swab taken from one of the fired cartridge casings found in the gutter. (Vol. 27, p. 5706) The portions of the .380 projectile that were recovered from Reverend Brandon's brain and dining room ceiling were matched to a projectile recovered from a tree pointed out by Holmes' father at the same location in Mississippi where investigators had recovered the cartridge casing. (Vol. 27, pp. 5674-5687)

Victim impact testimony from family members was introduced at the penalty phase. That testimony consisted of the two daughters testifying about the impact of this crime upon the Brandon family, and specifically upon Alice Brandon, as well as an edited video of Mrs. Brandon's existence in her daughter's care. (Vol. 29, pp. 6039-6058)

Evidence of the unadjudicated attempted burglary and potential murder of Mrs. Patricia Camp and the unadjudicated homicide of Terrance Blaze

were also admitted. On December 27, 2002, Holmes made a 911 call from her mother's house in reference to a gated community located very close to her mother's trailer known as "Nob Hill." The call was an attempt to gain an access code for the gate at the front of that community. (Vol. 29, pp. 5911-5917) No access code was given to Holmes during that call; however, Holmes was able to get into the neighborhood. Later that same day, Holmes, wearing a wig, attempted to get into the residence of Mrs. Patricia Camp by ringing the doorbell and asking to use the phone. Mrs. Camp spoke with Holmes, but denied her entry to her house. Mrs. Camp saw Holmes again two days later, again while Holmes was trying to gain entry to her residence. Mrs. Camp did not let Holmes in on this subsequent attempt either, and noticed a man was standing at the street waiting. (Vol. 29, pp. 5920-5924) Holmes admitted in a statement to authorities "If she would have opened that door, she would have been like Mr. Brandon" and "My plan was to get somebody on the hill that night." (Vol. 29, pp. 5928-5929)

Evidence of the Terrance Blaze homicide came into play when, as part of the Brandon investigation, Holmes directed authorities to Blaze's body. (Vol. 29, pp. 5933-5934, 5941-5944) High velocity blood spatter and other bloodstains matched to Blaze were found in Holmes' mother's vehicle and on Robert Coleman's right boot and right pants leg. (Vol. 29, pp. 5948-5955, 5985-5991) The stains indicate that Terrance Blaze was shot in Holmes' mother's vehicle, that Robert

Coleman was likely the driver at the time the shot was fired, and that the shot most likely came from the back seat. (Vol. 29, pp. 6029-6037) Holmes confessed in a letter to a prosecutor that she killed Terrance Blaze. (Vol. 29, p. 6011) Blaze was shot in the back of the head with a .380 caliber weapon and the bullet was recovered from his skull. The bullet had the same class characteristics as the bullet recovered from the tree in Mississippi. A cartridge casing found near where Blaze's body was dumped was matched to the cartridge case found in Mississippi. (Vol. 29, pp. 6001-6004)

Brandy Holmes and Robert Coleman were indicted for the first degree murder of Reverend Julian Brandon and the attempted first degree murder of his wife, Alice Brandon, as well as the first degree murder of Terrance Blaze. Holmes went to trial on the first degree murder of Reverend Brandon on February 6, 2006, in Caddo District Court and was convicted and sentenced to death. On direct appeal, the Louisiana Supreme Court affirmed petitioner's conviction and sentence, and rehearing was denied. *State v. Holmes*, 2006-2988 (La. 12/2/08), 5 So.3d 42, *rehearing denied*, 1/30/09. Petitioner's application for writs of certiorari followed.

SUMMARY OF ARGUMENT

As proportionality review is not required by the Eighth Amendment, there is no basis for federal review of a purely state court procedure.

Petitioner failed to raise many of her current complaints and supporting arguments in the state courts below.

CORRECTION OF PETITIONER'S MISSTATEMENTS

1. Prosecutorial "misconduct"

Petitioner asserts that the Louisiana Supreme Court failed to consider that the prosecutor stated at the codefendant's trial that he was the more culpable party, rather than petitioner. (p. 11, petitioner's writ application) This is a reworking of petitioner's claim on appeal that the State pursued inconsistent theories of prosecution, a claim that the Louisiana Supreme Court specifically found to be misleading:

> "As borne out in the record and her brief to this Court, defendant's focus on selective portions of the evidence presented and the State's closing arguments at both trials is misleading. As an initial matter, defendant concedes in her brief that at 'Coleman's trial, the prosecution argued that Coleman and Holmes both played an active role in the murder of Mr. Brandon [and] . . . charged Coleman as a principal in the alternative.'

Brief for the Appellant, p. 14. It is abundantly clear that the State was free to speculate which of the defendant's statements was the most truthful concerning her actual participation in the shooting of Julian Brandon. More importantly, during closing argument at the guilt phase, the State argued that even if the defendant was merely 'policing up the crime scene making sure nobody gets caught,' she was concerned in the commission of the offense and thus guilty as a principal. Trial Tr., vol. XXVIII, p. 5777 (Feb. 14, 2006).

During rebuttal closing at the guilt phase, the State further argued:

> We can't say which slice she inflicted, which stab she inflicted, which one of the times the trigger was pulled her finger was on it. But we can tell you that she was there helping, participating. It was too much for one person and that she wanted them dead because she didn't wear a mask and all the other things we've told you. When you realize that she had the specific intent to kill, she was involved in the killing and as the defense has conceded the victims were over 65, it was during an armed robbery, a burglary, and there was more than one person, the only appropriate verdict is guilty as charged of first degree murder. Trial Tr., vol. XXVIII, pp. 5812-13 (Feb. 14, 2006).

Similarly at the penalty phase, rather than arguing that defendant was the shooter, as

she claimed in one of her statements, counsel for the State argued:

> . . . I don't think we're ever going to have an answer to whose hand the gun was in as it relates to the Brandons and whose particular hand the knife was in as it relates to the Brandons, you have seen what the evidence does show. And that's simply coming back to this concept that they participated part and parcel together from start to finish. Trial Tr., vol. XXX, p. 6236 (Feb. 16, 2006)."

(Pp. 37a-38a of petitioner's appendix, or *see State v. Holmes, supra*, 5 So.3d at 64-65)

The duty to represent a client zealously does not excuse a lack of candor with the Court. *Nix v. Whiteside,* 475 U.S. 157, 106 S.Ct. 988, 89 L.Ed.2d 123 (1986).

2. No clear diagnosis of FAS was agreed upon by petitioner's expert witnesses

Petitioner also makes some telling omissions from her claims that her mitigating evidence was "compelling." At a pretrial hearing where petitioner attempted to prove she was mentally retarded, one of petitioner's expert witnesses, psychiatrist Dr. Richard Williams diagnosed her with Fetal Alcohol Syndrome (FAS). Dr. Williams confidently predicted that petitioner would be found to have frontal lobe damage. (Vol. 19, pp. 4153, 4162) His testimony was deflated

during the penalty phase when Dr. James Patterson's analysis of the MRI and PET scan test results did not support this prediction. (Vol. 30, pp. 6199-6206)

The State addresses this matter in more depth later in this opposition brief.

3. Louisiana Supreme Court DID review potential racial factors

As for petitioner's complaints that "Louisiana's review also fails to consider the introduction of invidious factors such as the race of the defendant and victim," petitioner did not raise this complaint in the state court. Indeed, she could hardly do so when the Louisiana Supreme Court specifically addressed the question of potential racial discrimination in its opinion, noting that petitioner and her victims were of the same race. *Holmes,* at 95-96.

ARGUMENT

I. THERE IS NO CONSTITUTIONAL REQUIREMENT THAT THE LOUISIANA SUPREME COURT CONDUCT PROPORTIONALITY REVIEW OF CAPITAL CASES

Petitioner advances a number of arguments to support her claim that the Louisiana Supreme Court failed to make a sufficient review of similar capital cases. None of them are convincing, and some are inaccurate.

Petitioner relies heavily on Justice Stevens' statement issued in relation to the writ denial of *Walker v. Georgia*, 129 S.Ct. 453 (2008). Although acknowledging that Walker did not present his claims in the state court, thereby precluding review, Justice Stevens expressed his views regarding state proportionality review in what can only be regarded as *dicta*, prompting Justice Thomas's concurrence.

Justice Thomas's concurrence with the denial of the writ makes clear, however, that "Proportionality review is not constitutionally required in any form." *Walker v. Georgia*, 129 S.Ct. 481, 483 (2008). Louisiana, like Georgia, "simply has elected, as a matter of state law, to provide an additional protection for capital defendants." *Ibid.* As there is no constitutional mandate, there is no basis for this Court to review the Louisiana Supreme Court's proportionality review process. Nor does *Walker*, or petitioner's claim, raise a new issue. This Court determined twenty-five years ago that certiorari review of such state procedures is not federally mandated:

> "Proportionality review was considered to be an additional safeguard against arbitrarily imposed death sentences, but we certainly did not hold that comparative review was constitutionally required." *Pulley v. Harris*, 465 U.S. 37, 50, 104 S.Ct. 871, 879, 79 L.Ed.2d 29 (1984).

Petitioner attempts to turn back the clock by claiming that amendments to Louisiana's capital punishment plan look "more and more" like the

mandatory death penalty plan condemned in *Furman v. Georgia,* 408 U.S. 238 (1972). This argument was not raised in the Louisiana Supreme Court, and cannot serve as the basis for review in the instant case. *Walker,* 129 S.Ct., at 454.

Moreover, petitioner's argument is disingenuous. Pre-*Furman*, a mandatory death sentence was the norm in Louisiana as well as Georgia. There can be no rational argument that more recent changes to the first degree murder statute have returned capital cases to a mandatory footing. While some elements of first degree murder may have been added, petitioner ignores the erosion of the death penalty that has occurred through the prohibition of the execution of the mentally retarded and the juvenile murderer. *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

Petitioner claims that "far more individuals are eligible for a possible death sentence today than when this Court last validated the Louisiana capital sentencing scheme." Petitioner, however, is not one of those individuals: in the instant case, two of the three aggravating circumstances found in petitioner's case have been part of the statute since 1979. La. R.S. 14:30 has since that time defined first degree murder as an intentional killing committed during the course of an armed robbery, and/or an intentional killing committed when the offender has the intent to kill or inflict great bodily harm upon more than one person, among other elements. Louisiana Acts 1979, No. 74.

The remaining aggravating circumstance returned by the jury in petitioner's case, the intentional killing of a victim over the age of sixty-five, was added by a 1992 amendment. La. Acts 1992, No. 296. In light of the fact that even an invalid aggravating circumstance will not undermine a death sentence where there are valid aggravating circumstances remaining, any unrelated additions to Louisiana's first degree murder statute are irrelevant to petitioner's case. *Zant v. Stephens*, 462 U.S. 862, 103 S.Ct. 2733, 77 L.Ed.2d 235 (1983); *State v. Anderson,* 2006-2987 (La. 9/9/08), 996 So.2d 973, *rehearing denied, cert. denied,* 129 S.Ct. 1906; *Watson v. Blackburn*, 756 F.2d 1055 (5th Cir. 1985), *cert. denied,* 476 U.S. 1153, 106 S.Ct. 2259, 90 L.Ed.2d 703, *rehearing denied,* 478 U.S. 1028, 106 S.Ct. 3341, 92 L.Ed.2d 749.

The State presented evidence of petitioner's murder of another person within a few days of the murder of Julian Brandon, and of her efforts to gain entry at another home a few days before, including her admission that if that homeowner had opened the door, she would have been dead. Louisiana Code of Criminal Procedure Article 905.2.A provides that "The sentencing hearing shall focus on the . . . character and propensities of the offender." Nothing could be more relevant for a jury considering whether to impose the death sentence.

Also raised for the first time in petitioner's application for certiorari is the claim that Louisiana's sentencing plan fails to "harness" jurors' discretion because it does not require jurors to "weigh" aggravating versus mitigating circumstances, and does not

impose a standard of proof on the jury's determination of sentence. Petitioner has not only failed to allege this claim in the state court, she has also failed, and failed utterly, to show that uniformity of state sentencing schemes is required by the Constitution.

Petitioner is also far from the mark when she complains that the Louisiana Supreme Court acted unconstitutionally by allowing more information be given to jurors during the penalty phase. As early as *Gregg v. Georgia,* 428 U.S. 153, 203-204, 96 S.Ct. 2909, 2939, 49 L.Ed.2d 859 (1976), this Court rejected an attack on the Georgia statute because of the "wide scope of evidence and argument allowed at presentence hearings." The joint opinion stated:

> "We think that the Georgia court wisely has chosen not to impose unnecessary restrictions on the evidence that can be offered at such a hearing and to approve open and far-ranging argument. . . . So long as the evidence introduced and the arguments made at the presentence hearing do not prejudice a defendant, it is preferable not to impose restrictions. We think it desirable for the jury to have as much information before it as possible when it makes the sentencing decision."

In *Payne v. Tennessee,* 501 U.S. 808, 821, 111 S.Ct. 2597, 2606, 115 L.Ed.2d 720 (1991), the Court specifically reversed *Booth v. Maryland,* 482 U.S. 496, 107 S.Ct. 2529, 96 L.Ed.2d 440 (1987), and *South*

Carolina v. Gathers, 490 U.S. 805, 109 S.Ct. 2207, 104 L.Ed.2d 876 (1989), which had imposed limits on evidence and argument the prosecution could present during the penalty phase:

> "Under our constitutional system, the primary responsibility for defining crimes against state law, fixing punishments for the commission of these crimes, and establishing procedures for criminal trials rests *with the States.*" *Payne, supra,* emphasis added.

There are some limitations, of course, but "[b]eyond these limitations . . . the Court has deferred to the State's choice of substantive factors relevant to the penalty determination." *California v. Ramos,* 463 U.S. 992, 1001, 103 S.Ct. 3446, 3453, 77 L.Ed.2d 1171 (1983), *Payne, supra.*

Payne cut petitioner's claims out from under her feet in another respect: the complained-of expansion of aggravating factors and crimes which serve as the basis for first degree murder:

> "'Within the constitutional limitations defined by our cases, the States enjoy their traditional latitude to prescribe the method by which those who commit murder shall be punished.' *Blystone v. Pennsylvania*, 494 U.S. 299, 309, 110 S.Ct. 1078, 1084, 108 L.Ed.2d 255 (1990). The States remain free, in capital cases, as well as others, to devise new procedures and new remedies to meet felt

> needs . . . victim impact evidence serves entirely legitimate purposes."

Payne, 501 U.S. at 824-825.

Besides these complaints about the victim impact testimony and the addition of aggravating factors, petitioner also complains about the evidence of other crimes which were presented as part of the "character and propensities" evidence required during the penalty phase.

> "A wide range of evidence is admissible on literally countless subjects: 'We have Long recognized that [f]or the determination of sentences, justice generally requires . . . that there be taken into account the *circumstances of the offense* together with the *character and propensities of the offender.*' *Gregg*, *supra*, 428 U.S. at 189, 96 S.Ct. at 2932 (emphasis added)."

Zant v. Stephens, *supra*, 462 U.S. at 900, 103 S.Ct. at 2755.

Petitioner's claims are without merit. There is no constitutional basis for review of the Louisiana Supreme Court's proportionality review of petitioner's death sentence.

II. THE LOUISIANA SUPREME COURT CONDUCTED A THOROUGH PROPORTIONALITY REVIEW

A fact which has no Eighth Amendment implications whatsoever

A. The Louisiana Supreme Court conducted a state-wide review of home invasion capital verdicts

Petitioner complains that the Louisiana Supreme Court erred in considering only first degree murder cases where the death penalty was actually returned in performing its proportionality analysis. As noted above, the Eighth Amendment does not require proportionality review, and the States are free to omit or include such a review of death penalty cases. The fact that one state may include the consideration of cases where the death penalty was not returned does not mean that every state must employ the same methodology. As *Harris* demonstrates, California has no proportionality review at all.

The Louisiana Supreme Court conducted a statewide analysis of home invasion first degree murder cases, not being content to rely on only those in Caddo Parish. *Holmes, supra,* 5 So.3d at 96. On her direct appeal, petitioner attempted to draw a comparison between eleven robbery first degree murder cases in Caddo Parish where the death penalty was returned and ten robbery first degree murder cases where a life sentence was imposed (either by agreement of the jury or their inability to reach a sentence

verdict, which triggers an automatic life sentence under La. C.Cr.P. Articles 905.6, 905.8). Petitioner's complaints are inconsistent, to say the least. On the one hand she complains that the Louisiana Supreme Court did not consider enough of one kind of case, while on the other she complains that they considered cases state-wide.

The comparisons actually made by the Louisiana Supreme Court are more relevant than those advanced by petitioner, as the cases the court used are so much closer to the facts of the instant case: "This Court has observed that Louisiana juries appear especially prone to impose capital punishment for crimes *committed in the home." Holmes,* 5 So.3d at 97, emphasis added. Undertaking the type of district-specific analysis used by petitioner in the state court, of the now 43 first degree murder cases tried in Caddo Parish since 1976, there were eight which involved home invasion robberies. Of those, seven defendants received the death penalty, the most recent being Felton Dorsey, whose death penalty was returned by the jury May 28, 2009.[1] (*See* State's

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[1] Listing of capital cases in Caddo Parish:

1. *State v. Nathaniel Code*, 627 So.2d 1373 (La. 1993), *cert. denied*, 511 U.S. 1100, 114 S.Ct. 1873, 128 L.Ed.2d 490, *rehearing denied*, 512 U.S. 1248, 114 S.Ct. 2775, 129 L.Ed.2d 887

2. *State v. Robert Coleman*, *reversed and remanded*, 2006-518 (La. 11/02/07), 970 So.2d 511, *rehearing denied*, 01/07/08

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Appendix 1.) The sole case involving a home invasion robbery where the death penalty was not returned was in 1976.[2] (*See* State's Appendix 1, p. 12.) Under the very type of analysis which petitioner urges, that being the inclusion of similar cases where the death penalty was not returned, it can be clearly seen that petitioner's death sentence was neither freakish nor arbitrary.

B. The weight to be given mitigating circumstances is for the trier of fact

Petitioner complains that the Louisiana Supreme Court did not consider mitigating circumstances in its proportionality review. There is no Eighth Amendment requirement that it do so. That task is for the

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3. *State v. Michael Cooks*, 97-0999 (La. 9/9/98), 720 So.2d 637, *cert. denied*, 526 U.S. 1042, 119 S.Ct. 1342, 143 L.Ed.2d 505, *rehearing denied*, 526 U.S. 1128, 119 S.Ct. 1789, 143 L.Ed.2d 816

4. *State v. Felton Dorsey*, 1st J.D.C., Docket No. 251,406

5. *State v. Darrell Dewayne Draughn*, 05-1825 (La. 01/17/07), 950 So.2d 583, *rehearing denied*, 3/30/07, *cert. denied*, ___ U.S. ___, 128 S.Ct. 537, 169 L.Ed.2d 377 (2007)

6. *State v. Cedric Edwards*, 97-1797 (La. 7/2/99), 750 So.2d 893, *cert. denied*, 528 U.S. 1026, 120 S.Ct. 542, 145 L.Ed.2d 421

7. *State v. Brandy Aileen Holmes*, 2006-2988 (La. 12/2/08), 5 So.3d 42, *rehearing denied*, 1/30/09

[2] *State v. John L. Donaldson*, 391 So.2d 1182 (La. 1980)

jury to do, and their determination was a reasonable one. The mitigating evidence was not nearly as clear-cut or "compelling" as petitioner presents it to the Court in her application, as noted above.

According to Dr. James Patterson, there is as yet not much objective statistical image analysis data on people with FAS, and he was unable to say that any physical brain defect caused petitioner to commit criminal acts. (Vol. 30, pp. 6201-6205) Moreover, it was not proven by a preponderance of the evidence that petitioner was either mentally retarded or has FAS. Dr. Patterson testified at the penalty phase about his analysis of the MRI and PET scans of petitioner's brain, and found that, although some brain abnormalities were found which were consistent with what was expected in "published results" on FAS, petitioner did not have other expected brain abnormalities. (Vol. 30, pp. 6200, 6202-6206) Dr. Patterson was unable to "reach a conclusion either way." (Vol. 30, p. 6205)

As for petitioner's claims of mental retardation, petitioner never filed the required notice of a claim of mental retardation, and her plea of "not guilty and not guilty by reason of insanity" was withdrawn after the report of the sanity commission was received. La. C.Cr.P. Article 905.5.1.B (Vol. 11, pp. 2350-2352, 2356-2365, Vol. 18, pp. 4046-4049) Her expert witnesses were similarly equivocal on the retardation issue presented at a motion to quash.

Psychologist Dr. Mark Vigen's opinion apparently morphed between his original report to defense counsel and the motion to quash. In his first report to defense counsel, Dr. Vigen had found that appellant was not mentally retarded. (Vol. 11, pp. 2393-2395) By the time of the hearing, Vigen testified that appellant was mentally retarded by the standards set out by La. C.Cr.P. Article 905.5.1, but not under the DSM-IV, and that he therefore could not diagnose her as mentally retarded. (Vol. 19, pp. 4194, 4203, 4206) Although Dr. Vigen testified at the motion to quash that petitioner was limited in two or more adaptive skills (Vol. 19, p. 4194), at the penalty phase he found that petitioner was "street smart," could drive, buy groceries, and was "responsible for her actions," competent and sane. (Vol. 30, pp. 6111, 6115, 6128)

Petitioner has been subjected to much psychological testing throughout her life. Those tests diagnosed petitioner as having depression, developmental disorders, oppositional defiant disorder, post-traumatic stress disorder and various learning disabilities and personality disorders. (*See* chart at Vol. 12, pp. 2609-2630.) None of them found her to be mentally retarded. This is not surprising, as her full scale IQ scores ranged from 74 to 78. An IQ of 70 or below is generally regarded as an indicator of mental retardation. (DSM-IV, p. 49)

Petitioner's other expert was also less than conclusive about whether she is mentally retarded. Dr. Richard Williams opined that appellant is mentally retarded under the definition of La. C.Cr.P. Article

905.5.1, but testified that he could not diagnose her as mentally retarded because she did not fit the criteria set out in the DSM-IV, rather she has a learning disorder. (Vol. 19, pp. 4154-4155, 4171) At the penalty phase, Williams testified that petitioner has "borderline intellectual functioning." (Vol. 30, p. 6141)

Conflicting testimony of expert witnesses who are unable to reach conclusions or make diagnoses about claimed mental defects hardly constitute "compelling" mitigating evidence.

C. The Louisiana Supreme Court conducted a state-wide review of similar cases

Petitioner complains that the Louisiana Supreme Court proportionality review "employs an inter-district review in only some cases, without a consistently-articulated justification for the inconsistency." In petitioner's case, however, the court employed a state-wide review of capital cases involving home invasion robberies, attacks on more than one victim, and attacks on elderly victims. *Holmes,* at 97-98.

As noted above, if the court had chosen to conduct a Caddo-Parish-only review of home invasion cases, it would have been revealed that of the seven capital trials for home invasion robberies that had been tried in Caddo Parish at the time of the appeal, six defendants received the death penalty.

In her direct appeal, petitioner limited her own comparison of first degree murder cases to those tried in Caddo Parish. Despite this, the Louisiana Supreme Court reviewed cases from other districts throughout the state. On rehearing, petitioner then complained that the court conducted a state-wide proportionality review. (Petitioner's Application for Rehearing, p. 10) Petitioner has not stated a constitutional basis for micro-managing whether state supreme courts may conduct district-only or must conduct state-wide review of similar cases, for those states which have proportionality review.

As for petitioner's claims that the Louisiana Supreme Court did not conduct a review for arbitrary factors, the State has previously addressed the inaccuracies in a portion of this claim, regarding potential impact from racial discrimination. There remains petitioner's new claim that the judicial district in which the case arose was an "arbitrary factor" that should have been considered in the court's proportionality review. The State cannot but note that the district in which the case arose was not due to any arbitrary action by the State, judge or jury, but falls upon the murderer herself. She chose the location as well as the victims. Petitioner has failed, moreover, to enlighten the reader as to just what this has to do with proportionality.

Petitioner even goes so far as to complain about the content of the Sentencing Memorandum filed by the State. Such complaints about whether the State included details of her mental illness claims are

absurd. Federal courts are not "super" state courts acting to correct interpretations of state law. Claims that the trial court improperly applied state law do not constitute an independent basis for federal review. *Narvaiz v. Johnson*, 134 F.3d 688, 695 (5th Cir. 1998), *cert. denied*, 524 U.S. 947, 118 S.Ct. 2364, 141 L.Ed.2d 731.

Under Louisiana Supreme Court Rule 28,[3] every capital defendant is required to file her own sentence

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[3] Also titled as La. C.Cr.P. Article 905.9.1, Section 4.

Sentence Review Memoranda; Form; Time for Filing.

(a) In addition to the briefs required on the appeal of the guilt-determination trial, the district attorney and the defendant shall file sentence review memoranda addressed to the propriety of the sentence. The form shall conform, insofar as applicable, to that required for briefs.

(b) The district attorney shall file the memorandum on behalf of the state within the time provided for the defendant to file his brief on the appeal. The memorandum shall include:

i. a list of each first degree murder case in the district in which sentence was imposed after January 1, 1976. The list shall include the docket number, caption, crime convicted, sentence actually imposed and a synopsis of the facts in the record concerning the crime and the defendant.

ii. a synopsis of the facts in the record concerning the crime and the defendant in the instant case.

iii. any other matter relating to the guidelines in Section 1.

(Continued on following page)

review memorandum, and may include whatever facts she deems relevant in that document. In fact petitioner did file such a memorandum, included as State's Appendix B. The even-handedness of Rule 28 renders petitioner's complaints about the content of the State's Capital Sentencing Memorandum beside the point: Rule 28 permits petitioner to correct any perceived flaws or omissions in her own memorandum. This ensures that information petitioner deems relevant will be seen by the reviewing court, satisfying any due process concerns. It does not, however, permit petitioner, under the guise of a constitutional claim, to require this Court dictate to the State what to include in the State's memorandum. Once again, federal courts do not operate as "super" state courts, and petitioner's complaints were properly rejected by the Louisiana Supreme Court, based on state law. Petitioner's complaints are without merit.

(c) Defense counsel shall file a memorandum on behalf of the defendant within the time for the state to file its brief on the appeal. The memorandum shall address itself to the state's memorandum and any other matter relative to the guidelines in Section 1.

CONCLUSION

Respondent State of Louisiana shows that the writ should not be granted in the instant case:

I. The Louisiana Supreme Court did not err in affirming petitioner's sentence on appeal. Their thorough review of capital convictions throughout the state supported the finding that the sentence was not disproportionate.

II. More importantly, there is no Eighth Amendment basis for federal review of proportionality analysis when such analysis is not required by the Constitution.

WHEREFORE, the State of Louisiana prays that Brandy Holmes's application for writ of certiorari be denied.

Respectfully submitted,

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APPENDIX 1

LOUISIANA SUPREME COURT
NO. 2006-KA-2988

STATE OF LOUISIANA

V.

BRANDY AILEEN HOLMES

ON AUTOMATIC APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF CADDO, STATE OF LOUISIANA, NUMBER 226,819, CRIMINAL DOCKET HONORABLE SCOTT J. CRICHTON, DISTRICT JUDGE

SENTENCE REVIEW MEMORANDUM
ON BEHALF OF THE
STATE OF LOUISIANA, PLAINTIFF-APPELLEE

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LOUISIANA CONSTITUTION

ARTICLE I, SECTION 20 42

NOW INTO COURT, through the undersigned assistant district attorney, comes the State of Louisiana, which pursuant to Rule 28, § 4 of the Rules of this Court, respectfully presents this Sentence Review Memorandum:

The following is a list of first-degree murder indictments returned by the Caddo Parish Grand Jury, First Judicial District, State of Louisiana, since January 1, 1976, where the same verdict was returned by a petit jury in each case.

(1) *State v. Solomon Birdsong, Jr.*, 452 So.2d 1236 (La.App.2d Cir. 1984), *writ den.* 457 So.2d 1200; Docket No. 120,403, First Judicial District Court.

Solomon Birdsong, Jr., was indicted for the first-degree murder of a Pizza Hut employee. A jury found Birdsong guilty as charged. Following a sentencing hearing, the jury recommended that the defendant be incarcerated for the remainder of his life without benefit of probation, parole or suspension of sentence.

In February of 1982, Solomon Birdsong, accompanied by his brother Philander, placed a Pizza Hut employee in the "cooler" of the restaurant in the course of an armed robbery. After leaving the victim in the cooler, Birdsong decided to eliminate the only witness who could identify him. He reopened the door to the cooler, raised a .32 caliber automatic pistol and fired a bullet into the head of the victim. He closed the door, but reopened it thinking the victim was still

alive. He then fired another shot into the victim to make sure that she was dead. Birdsong then completed the robbery by removing a bag of money from the cash register and fleeing to his automobile where his brother Philander waited for him.

The prosecution urged as an aggravating circumstance that the murder occurred during the commission of an armed robbery and that it was committed in an especially cruel and heinous manner. In mitigation the defense argued that Birdsong was insane at the time of the offense. Further, the defense urged the jury to consider Birdsong's youth (19 years of age), his lack of a prior criminal history and his good family background. (Birdsong was the son of a prominent Shreveport educator.)

(2) *State v. Arthur Lee Brown*, 478 So.2d 600 (La.App.2d Cir. 1985); No. 123,619-D, First Judicial District Court.

Arthur Lee Brown and two co-defendants were indicted by a Caddo Parish grand jury for the first-degree murder of Charles Moss. After trial by jury, Brown was found guilty as charged. Because the jurors were unable to unanimously agree on the death penalty, Brown was sentenced to life imprisonment without benefit of probation, parole or suspension of sentence.

On the evening of March 26, 1983, Charles Moss was abducted by three black males while in his automobile waiting to pick up an order from a

Wendy's restaurant in north Shreveport. Brown and his co-conspirators, Gregory Means and Terrell Porter, drove Moss to a secluded area of town and robbed him of $5. When Moss attempted to escape his abductors he was pursued by Brown and Porter. Moss was then stabbed approximately 35 times with a butcher knife. He was nearly decapitated. His body was weighted down with cement blocks and dumped into a nearby pond. His automobile was burned beyond recognition so as to leave no trace of their actions.

The State argued as aggravating circumstances that the defendant was engaged in the perpetration of an armed robbery and an aggravated kidnapping at the time the offense was committed. The State also argued that the offense was committed in an especially cruel, heinous and atrocious manner.

In mitigation, the defense contended that the evidence of Brown's participation was so tenuous that the jury could not comfortably return the death penalty. The defense argued that Terrell Porter was engaged in a frenzied overkill at the time of the murder and that it was he, not Brown, who was more culpable. The defense also argued in mitigation Brown's youth (19 years of age) and that he had no substantial prior criminal record.

Other pertinent facts in this case include the jury's awareness that Porter had been permitted to plead guilty to first-degree murder without capital punishment, and that Means, the prosecution's chief

witness, had pled guilty to armed robbery and accessory after the fact to first degree murder.

(3) *State v. Charles Caldwell*, 388 So.2d 1163 (La. 1980) (per curiam); Docket No. 111,554, First Judicial District Court.

Charles Caldwell was indicted by a Caddo Parish grand jury for the first degree murder of Henry Simmons in violation of La. R.S. 14:30. After a three day trial, the jury unanimously convicted Caldwell of First Degree Murder. The trial court then sentenced Caldwell to life imprisonment without benefit of probation, parole or suspension of sentence.

The facts leading to Caldwell's conviction and sentence were as follows. Pamela Caldwell moved back into the home of her parents following a legal separation from the defendant. On the evening of June 16, 1979, Henry Simmons, age 55, picked up Pamela and returned to her home in the early morning hours of the following day. While Ms. Caldwell and Simmons were parked in front of Ms. Caldwell's home, Charles Caldwell emerged from some bushes (where he had spent the night awaiting Pamela's return) carrying a rifle. Thereupon he shot Simmons seven times, killing him.

Although the offense arose out of circumstances which indicated that the murder was s specific intent killing, the State chose not to seek the death penalty because the killing did not involve any underlying aggravating circumstances.

(4) *State v. Field Calhoun*, 554 So.2d 127 (La. App. 2d Cir., 1989), *writ denied*, 558 So.2d 601, Docket No. 136,984; First Judicial District Court.

Field Calhoun was indicted for the first-degree murder of Robert Smith. At trial the jury found Calhoun guilty as charged, but was unable to agree whether death or life imprisonment should be imposed. The district court accordingly sentenced Calhoun to life imprisonment at hard labor without benefit of probation, parole or suspension of sentence.

On December 20, 1986, Mr. and Mrs. Robert Smith stopped at a grocery store on the way home from work. Mrs. Smith went inside and used a $100 bill to make some purchases. Field Calhoun was in the store and saw the $100 bill. When Mrs. Smith left the store, Calhoun grabbed her, put a gun to her head and demanded her money. Mr. Smith got out of the car to help his wife and was shot twice by Calhoun.

Calhoun testified he had been using marijuana and cocaine that day and that he had been drinking steadily since the day before. Calhoun also claimed that he accidentally bumped into Mrs. Smith and was only trying to stop Mr. Smith when, he fired. Calhoun was 17 years of age at the time of the offense.

(5) *State v. Laderick Campbell*, 2006-286, Louisiana Supreme Court, Docket No. 220,544, First Judicial District.

Laderick Campbell was convicted of first degree murder committed in the course of an armed robbery and sentenced to death. On February 11, 2002, 51 year old Kathy Parker was working as a cashier at the Magnolia Club in Rodessa in rural Caddo Parish. At about 9:30 p.m., two black males, later identified as twenty-two year old Laderick Campbell and James "Peanut" Washington, entered the club. A video surveillance camera recorded the events that transpired.

Campbell, who was armed with a shotgun, demanded cash from Mrs. Parker, Witnesses testified that she said she'd give him whatever he wanted, and begged him not to shoot her. When Mrs. Parker opened the cash register, Campbell reached over and grabbed the money. He then shot Kathy Parker once in the chest. Kathy Parker died later that evening at LSU Medical Center. Campbell and Washington fled in a vehicle driven by Lakischa "Keeta" Holloway, with Virginia Burkett as a passenger. Both young women testified for the prosecution. As Campbell got in the car, he remarked "I shot the white bitch in the neck."

A Caddo Parish Detective reviewed the video surveillance tape from the Magnolia Club and recognized both men. He had dealt with them since they were juveniles, and he knew they associated

with each other. The next day the same Caddo detective received a phone call from the Cass County, Texas, Sheriff's Office, passing on information regarding the identity and location of the robbery and murder suspects. Campbell was arrested in Kildare, Texas, on February 12, 2002, on Caddo's warrants for first degree murder and armed robbery. Campbell denied any knowledge of the crime, and claimed he was at his mother's house in Springhill at the time.

After a thorough colloquy, Campbell represented himself at trial, with standby counsel from the Caddo Parish Public Defenders Office, who then conducted the penalty phase at Campbell's request. The State presented victim impact testimony from Kathy Parker's husband, daughter and employer/friend. Campbell presented testimony that he would be a model prisoner in the general population, but this was rebutted by testimony of Campbell's unprovoked attack with a chair on another inmate.

(6) *State v. Nathaniel Robert Code, Jr.*, 627 So.2d 1373 (La. 1993), *certiorari denied* 511 U.S. 1100, 114 S.Ct. 1870, 128 L.Ed.2d 490, *rehearing denied* 512 U.S. 1248, 114 S.Ct. 2775, 129 L.Ed.2d 887; Docket No. 138,860 – A, First Judicial District Court.

Nathaniel Code was indicted for eight counts of first-degree murder, committed over four years. Code was tried for the murders of Vivian Chaney, Carlitha Culbert, Jerry Culbert and Billy Joe Harris ("the Chaney family"), convicted and sentenced to death on

each of the four counts. The jury found as aggravating circumstances that Code had knowingly created a risk of death to more than one person, that three of the murders had been committed in a particularly heinous, atrocious or cruel manner and that Code was engaged in the perpetration or attempted perpetration of aggravated burglary, armed robbery, first-degree robbery or simple robbery. This matter is currently pending post-conviction relief.

The Chaney family was murdered on July 19, 1985. Billy Joe Harris was shot five times and had his throat cut. Jerry Culbert was shot once in the head as he slept. Vivian Chaney's face was brutally beaten and she was forced to sit in her daughter's blood after Code slashed Carlitha's throat. Vivian Chaney was then strangled by use of a ligature and/or drowned in the bathtub where her body was found. Code's palm print was found on the bathtub. After murdering Vivian Chaney, Code returned to Carlitha who had been crawling on the floor. He slashed her throat repeatedly, nearly decapitating her. Each of the three stabbing victims was bound with electrical cord or shoelaces and all but Billy Joe Harris were sight impaired or legally blind. Code was charged after his fingerprints were matched to the latent print found on the bathtub.

At trial the State also proved that Code had murdered four other people. Evidence as to these murders was admitted to show system and identity. During the penalty phase, the State showed that

Code had previously pled guilty to attempted aggravated rape, reduced from aggravated rape, an incident in which he threatened the victim with a knife, and threatened to kill her children. Code served fifteen years at hard labor for the attempted aggravated rape. The first of the eight murders was committed eight months after his release.

(7) *State v. Robert Glen Coleman*, 2006-518, Louisiana Supreme Court, Docket No. 226,818, First Judicial District.

Robert Coleman and Brandy Holmes were arrested by the Caddo Sheriff's Office and later indicted for the first degree murder of Rev. Julian Brandon and the attempted first degree murder of his wife, Alice Brandon, as well as the first degree murder of Terrance Blaze. Coleman was convicted and sentenced to death.

Coleman and Holmes entered the Brandon home in rural Caddo Parish during the evening hours of New Year's Day 2003. After pushing their way into the front door of the Brandon residence, Julian Brandon, a retired Baptist preacher, was shot at near contact range under the chin with a .380 caliber handgun. The projectile separated into two pieces. One piece entered Julian Brandon's brain. The other piece exited the top portion of his head and was later recovered from the ceiling of the dining room adjacent to the front entryway. Brandon collapsed.

Mrs. Brandon was taken to the rear bedroom and shot in the head and left for dead. Reverend Brandon was then attacked again by the intruders. At least three separate Chicago Cutlery style knives from the Brandons' kitchen were used in this second attack. Brandon received cuts to his nose, face and top of the head. Rev. Brandon's throat was cut by multiple starting/stopping incisions from the front right of his neck, across the front and around to the back of his head. He was stabbed four times in the upper chest with wounds that penetrated up to 6 inches. He was also stabbed in the back where a six-inch knife was found imbedded up to the handle in his back. Rev. Brandon also had a large contusion from blunt force trauma on his forehead. Pieces of the shattered knife blades from these knives were found at the scene. When the scene was discovered on January 5, 2003, Mrs. Brandon was still alive and was transported by helicopter to the hospital. Mrs. Brandon continues to be in an impaired state as a result of the gunshot wound to her head.

The Caddo Sheriff's Office investigation started off quickly with a call from persons at a nearby apartment complex. It was learned that shortly after New Year's Day Brandy Holmes was in a near-by apartment complex trying to sell jewelry and making statements about killing an old couple down the road by a church. Detectives went to the Holmes' trailer, which was just around the corner from the homicide scene, and contacted Holmes, Coleman and other family members. The group agreed to go to the

detective office for interviews. Coleman denied involvement but displayed a small cut on his hand.

The investigation revealed and the evidence showed a close link between Coleman and Holmes. Coleman and Holmes traveled from Mississippi, where they lived together as boyfriend/girlfriend, to Shreveport on Christmas Eve, 2002. They were picked up by Holmes' mother and resided in her trailer while the couple was in Shreveport. They brought with them a .380 caliber handgun, which they had acquired from Holmes' father.

Coleman was seen at a New Year's Eve party at Holmes' trailer with a pistol and overheard making inquires about where he could "hit a lick" (i.e, a robbery). The next evening the home invasion robbery and murder of Rev. Brandon occurred. Among other thing, jewelry, particularly a multicolored bracelet, and bankcards were taken from the home. Coleman and Holmes were recorded on a Hibernia bank surveillance video a short time later trying to use a bankcard with the incorrect pin number.

Several days passed before the Brandons were discovered. A family friend who missed the Brandons' regular phone contacts and attendance at morning and evening Sunday services went to the home and found the couple. Bloody footprints were found during the processing of the scene, which was occurring simultaneously with the interviews of the persons from the Holmes' trailer. As a result, Coleman's boots were seized. Pants from a duffle bag carried by

Coleman were seized later. Preliminary tests showed positive for bloodstains on these items. DNA analysis later confirmed that Rev. Brandon's blood was on the boots worn and seized from Coleman in a distinctive blood spatter pattern. Blood from the unrelated murder of Terrance Blaze was also found on Coleman's pants. This information was presented during the penalty phase.

The blood pattern of very small blood spots seized from Coleman's boots revealed that he had to be standing close to Brandon when the blood transfer occurred. This type of blood spatter comes from fast moving blood, such as from gunshots. It was not the type of blood pattern that would come from walking through a bloody area. Coleman was arrested for murder after the interviews that evening and the next morning.

Coleman was placed in an intake cell with two other inmates. Coleman made statements relating details of how he and his girlfriend, who he was "training" and "putting to the test," robbed and killed an old couple. The inmates immediately contacted the guards. They were separated from Coleman and reported the statements to detectives

Many incriminating items were recovered from the Holmes' trailer where the two murderers had stayed. Most importantly, a clear plastic food service glove was found in the rain gutter of the trailer. A multi-colored bracelet and a pearl bracelet were found in the glove. Three empty fired .380 shell

casings were found in the gutter near the glove. Rev. Brandon's daughter identified the multi-colored bracelet as one she had given her mother some time earlier and which was missing from the home after the attack. The shell casings were matched to .380 shell casings recovered from Mississippi where Holmes' father showed detectives where he had fired a .380 handgun that was missing at the time of Coleman and Holmes' departure from Mississippi just prior to the murder. The portions of the .380 projectile that were recovered from Rev. Brandon's brain and dining room ceiling were matched to a projectile recovered from a tree at the same location in Mississippi where police had recovered shell casings pointed out by Holmes' father.

Victim impact testimony from family members and a family friend was introduced at penalty phase. Evidence of Coleman's prior convictions, including armed robbery, and the unadjudicated homicide of Terrance Blaze were also admitted, Coleman's case is currently pending appeal.

(8) *State v. Michael Anthony Cooks*, 97-0999 (La. 09/09/98), 720 So.2d 637, *certiorari denied* 526 U.S. 1042, 119 S.Ct. 1342, 143 L.Ed.2d 505, *rehearing denied* 526 U.S. 1128, 119 S.Ct. 1789, 143 L.Ed.2d 816; Docket No. 173,208, First Judicial District Court.

Michael Anthony Cooks was indicted for and convicted of the first-degree murder of Joe Frazier.

The jury unanimously recommended the death penalty, finding as aggravating circumstances that the killing took place in the course of a robbery and that Cooks knowingly created a risk of death or great bodily harm to more than one person.

On January 20, 1995 Cooks, known as "Da Mad Monsta Crip," and at least five others invaded Frazier's home and forced him and two other victims to the floor. Frazier was shot fourteen times in the back with three different caliber bullets, including a .45 caliber. The other two victims were shot five or six times each, one losing an eye. Both were shot in the head and sustained some brain damage. At trial the surviving victims testified that Cooks was the leader and gave orders to the others to "kill this bitch." Cooks was carrying a .45 chrome automatic. As Cooks was leaving the house, Frazier was crawling across the floor. Cooks shot him in the back, put a new clip in his weapon and shot him some more. Cooks stole marijuana and cash from the house. Cooks' girlfriend called police and turned him in. While in prison Cooks wrote letters in "gang script" to the girlfriend threatening the lives of the surviving victims. He also threatened to kill the girlfriend and her sister after burning their genitals with a cigarette lighter.

During the penalty phase, Cooks' defense team presented testimony by Mark Vigen, a psychologist, that Cooks had a little lower than average IQ but was not borderline or retarded and that Cooks handled stress through violence. Cooks' sister testified that their mother's boyfriends had pushed him around.

His niece testified that Cooks had once taken her "trick or treating" and his thirteen year old son, whom he had rarely seen until he was nine, testified that he'd be sad if his father got the death penalty.

The State presented restricted evidence of an aggravated battery committed while incarcerated awaiting trial where Cooks had stabbed out the eye of another inmate. The State also presented limited testimony regarding another aggravated battery incident where Cooks and other gang members attacked a customer in a liquor store. As in the instant case, Cooks directed his companions to kill their victim. Cooks personally beat this victim with a newspaper rack and threatened to kill two liquor store attendants if they told police. It is hardly surprising that the jury, confronted with "Da Mad Monsta Crip's" violent tendencies, agreed unanimously to impose the death sentence.

(9) *State v. Percy Davis*, 92-1623, (La. 5/23/94), 637 So.2d 1012, *certiorari denied* 513 U.S. 975, 115 S.Ct. 450, 130 L.Ed.2d 359, *rehearing denied* 513 U.S. 1066, 115 S.Ct. 687, 130 L.Ed.2d 617; Docket No. 151,074, First Judicial District Court.

Percy Davis was indicted for two counts of first-degree murder committed two days apart. The counts were tried together and Davis was found guilty and sentenced to death on both counts. The jury found as to each count the aggravating circumstance that

Davis had been engaged in the perpetration of armed robbery. The case is now on post-conviction relief.

Mark Sanchez was a cashier at a Circle K convenience store on North Market Street in Shreveport. On June 29, 1990, he was working after midnight. Davis parked his car behind the Circle K and went in. He shot Mark Sanchez three times: twice in the abdomen and once right between the eyes. Davis then jumped onto the counter and opened the cash register, obtaining $30 to $40. Sanchez died the next day.

On July 1, 1990, Calvin Moore and his wife Norma were working at "Fats' Exxon," a convenience store in the North Market Street area which he and his wife owned. At midnight, Davis and Rodney Hill entered the store. Davis took a gun from his sock and shot Calvin Moore in the chest. He shot at Norma Moore as well. This time, a video surveillance camera recorded the murder. Local television stations broadcast part of the tape and Rodney Hill turned himself in to police that same night. Davis was arrested shortly thereafter. His gun, a .25 Raven automatic, was identified as the murder weapon in both killings as well as the attempted murder of Johnny Hall, the same night as Mark Sanchez was murdered. Hall was working as a cashier at Fats' Exxon at the time.

The jury found the presence of three aggravating circumstances for each of the murders of Mark Sanchez and Calvin Moore.

The jury found as to both murders that the murders were committed in the perpetration or attempted perpetration of armed robbery, and that the offender had been previously convicted of an unrelated armed robbery. This additional armed robbery occurred in Bossier City only a few days before the Shreveport murders, and testimony proved defendant's plea of guilty to that charge.

As to the murder of Mark Sanchez, the jury found as an additional aggravating circumstance that the murder was committed in an especially heinous, atrocious or cruel manner.

As to the murder of Calvin Moore, the jury found as an additional aggravating circumstance that the offender knowingly created a risk of death and great bodily harm to more than one person. During the armed robbery of Fats' Exxon, Percy Davis not only shot Calvin Moore, he also fired at Norma Moore, hitting a display case near where she was standing.

Defense counsel tried to present Davis as a victim of his cocaine addiction and argued intoxication in mitigation.

(10) *State v. Curtis Deal*, 00-0434 (La. 11/28/01), 802 So.2d 1254, *certiorari denied* 537 U.S. 828, 123 S.Ct. 124, 154 L.Ed.2d 42; Docket No. 184,852, First Judicial District Court.

Curtis R. Deal was convicted of the First Degree Murder of his eleven week old son, [Name Of Minor

Child Omitted]. The jury sentenced the defendant to death.

On the evening of November 16, 1996, Deal and his wife, the mother of his infant son, were entertaining a house guest at the home which they shared with the victim's grandmother. After much drinking of beer, Deal was up alone after everyone else went to sleep. In the early morning hours of November 17, 1996, the victim began crying. Deal became frustrated with the baby continuing to cry after he had fed the child. Deal stuffed a golf ball size piece of paper towel down the baby's throat and then fractured the baby's skull by throwing the child into the baby bed, causing the baby's head to strike the slats of the crib. The Fire Department responded to Deal's 911 call and found the baby dead. The towel was removed from the baby's throat, but fevered efforts at resuscitation were unsuccessful. Later that same afternoon Deal confessed to Shreveport Police Department detectives what he had done.

At the penalty phase Deal testified that he never meant to kill his son. The defendant also presented the evidence of Dr. Mark Vigen, a psychologist, who testified Deal was of average intelligence and the product of developmental circumstances and of biological vulnerability. Dr. Vigen said Deal was dependent on alcohol and drugs. Dr. Vigen also testified that he was told by family members that Deal had a terrible temper and as a child would often tease and behave cruelly toward his siblings. Dr. Vigen was also told that Deal had a history of cruelty to animals,

including squeezing the family dog's testicles and allowing the dog to attack penned chickens and terrify a pet caged rabbit. Dr. Vigen also found Deal likely to have chronic problems with anger and irritability which may be disruptive if not dangerous.

(11) *State v. John L. Donaldson*, 391 So.2d 1182 (La. 1980) (per curiam); Docket No. 110,214, First Judicial District Court.

John L. Donaldson was indicted by a Caddo Parish grand jury for the first degree murder of an elderly Shreveport woman on January 12, 1979. Donaldson was also indicted for the aggravated burglary of the victim's home. Following trial by jury Donaldson was found guilty as charged of first degree murder. The jury was unable to reach agreement on a sentence. Donaldson was then sentenced to life imprisonment pursuant to La.C.Cr.P. Article 905.8.

The facts surrounding Donaldson's conviction and sentence were as follows. Eighty years old at the time of her death, Mrs. Herrin sustained three fatal stab wounds in her back. When police arrived to investigate, they discovered that the murderer had taken numerous items from the home, including diamond rings taken from the fingers of Herrin and weapons from the home. Shortly thereafter Donaldson was stopped by Bossier City police on a traffic violation. Police officers discovered the items stolen from the Herrin residence and the murder weapon in his vehicle.

The prosecution argued as aggravating circumstances that the killing occurred during the commission of an aggravated burglary and that it was an especially cruel and heinous offense. In mitigation, the defense argued that Donaldson had no previous criminal history and that he had a wife and family. The defense also urged the jury not to return the death penalty since the prosecution's case was entirely circumstantial.

(12) *State v. Willie Douglas*, 37,721-KA, (La.App.2d Cir. 12/10/03), 862 So.2d 390, *writ denied* 2004-0153 (La. 5/7/04), 872 So.2d 1080; Docket No. 207,807, First Judicial District Court.

Willie Douglas was convicted of the first degree murder of his girlfriend's three year old daughter, [Name Of Minor Child Omitted]. The jury was unable to reach a unanimous verdict during the sentencing phase, so a life sentence was imposed.

Douglas was the live-in boyfriend of Gwen Remedies, who was about 6 months pregnant with his child. Gwen's friend Anita was letting Gwen and Willie stay with her. Anita and Gwen were moving that week to a new place where Willie was not going to be living. Anita left her two children with Willie while she and Gwen went to the new place to clean up. Gwen also left three year old [Name Of Minor Child Omitted] with Douglas.

Douglas later called 911, claiming [Name Of Minor Child Omitted] fell down the stairs on the way

to the pool, but gave differing versions of how it happened. In fact, as the coroner testified, [Name Of Minor Child Omitted] was shaken so hard that her brain began to separate from itself and the walls of the skull, causing a severe hematoma. Her injuries were not consistent with a fall down the stairs.

One side of the brain swelled so much it compressed the other down onto the brain stem, eventually stopping the signals necessary to make the heart beat and the lungs breathe. In addition [Name Of Minor Child Omitted]'s abdomen was compressed in a manner that left no external mark but to such a degree the coroner said he could feel her spine if he pressed down with his hand. This resulted in a laceration inside the liver as it was crushed against the spine. The child had "fingertip" bruises consistent with being held violently as well as a broken rib.

In addition at the hospital while [Name Of Minor Child Omitted] was in the pediatric intensive care unit, Douglas assaulted the investigating officer and told an LSU Medical Center police officer: "I should have kicked her ass. I run her and if I tell her to shut down the investigation, it stops." At the penalty phase, twenty or so church members, family members, etc. testified as to Douglas's character.

(13) *State v. Darrell Dewayne Draughn*, 05-1825, Louisiana Supreme Court; Docket No. 212,107, First Judicial District.

Darrell Draughn was convicted of the first degree murder of sixty-four year old Loretta White. The jury

found that the offense was committed during the course of an armed robbery, first degree robbery or simple robbery, and was committed in an especially heinous, atrocious and cruel manner. Draughn was sentenced to death.

Loretta White's body was discovered on the morning of April 10, 2000, by her son when he arrived to take her to work. Loretta White had been stabbed 51 times, mostly in her head, face and neck. Her hands and forearms had defensive wounds. One stab wound to her right shoulder severed the carotid artery, and was likely the fatal wound. At least two stab wounds to her abdomen were post-mortem, probably inflicted to determine if Loretta White was actually dead.

Mrs. White's purse, wallet and picture holder were in the hallway next to the kitchen where her body was found. Missing from the wallet was the small amount of cash she habitually carried, from $20 to $40, and her credit cards and checkbook.

Blood droplets located at the crime scene were later matched to Draughn's DNA, who had become a suspect after an anonymous tip. Upon his arrest, a large scar was observed on Draughn's right hand between the ring finger and the little finger. The ring finger was also "drawn up" as if it had been injured.

Draughn lived with his mother, a few houses down from the victim's home on the same block of East Boulevard Street. At the time of his arrest, some seven months after the instant offense, Draughn was

incarcerated for an unrelated homicide where he had been positively identified in a shooting. That second degree murder charge was dismissed after Draughn was sentenced to death for the instant offense. Evidence of the unrelated homicide was presented to the jury during the penalty phase of the trial. Draughn's case is currently pending appeal before this court.

(14) *State v. Cedric D. Edwards*, 97-1797 (La. 7/2/99), 750 So.2d 893, *certiorari denied* 528 U.S. 1026, 120 S.Ct. 542, 145 L.Ed.2d 421; Docket No. 177,994, First Judicial District Court.

Cedric Edwards was convicted of the first-degree murder of Victoria Catanese Kennedy and was sentenced to death.

Edwards and at least one unidentified man made an unauthorized entry into the home of Gerald and Victoria Kennedy. The men had entered after Gerald saw them and went into the house to get a gun. He yelled to his wife and daughter to run. Edwards shot Gerald, breaking his arm. Victoria fell as she ran and Edwards shot her twice in the back of the head. Their teenage daughter hid under a sofa and escaped injury.

The jury found as aggravating factors that the offender was engaged in the commission or attempted commission of armed robbery or aggravated burglary and that the offender knowingly created a risk of death or great bodily harm to more than one person.

(15) *State v. Wayne Robert Felde*, 422 So.2d 370 (La. 1982); *certiorari denied* 461 U.S. 918, 103 S.Ct. 1903, 77 L.Ed.2d 290 (1983); Docket No. 109,803, First Judicial District Court.

Wayne Robert Felde was indicted by a Caddo Parish grand jury for the first degree murder of Shreveport police officer Glen Tompkins and found guilty as charged. The same jury unanimously recommended a death sentence on the ground of one aggravating circumstance: the victim was a peace officer engaged in his lawful duties. La. C.Cr.P. Article 905.4(b).

On October 20, 1978, Wayne Robert Felde, an escapee from a Maryland penitentiary where he had been serving time for manslaughter and four counts of felonious assault, shot and killed a Shreveport police officer. Police had responded to a disturbance at a pizza restaurant where they arrested Felde. A pat-down search failed to disclose a pistol hidden in his trousers.

On the way to the Shreveport Police Department, Felde managed to withdraw the weapon from his trousers and fired into the back of the front seat where Officer Tompkins sat behind the wheel. Tompkins was shot in the back and died only minutes afterwards. The defense presented a complex insanity defense, alleging that be suffered from a post-traumatic stress syndrome as a result of combat in Viet Nam. Felde also alleged intoxication as part of his defense.

The sole aggravating circumstance urged by the prosecution was that the victim was a police officer engaged in his lawful duties at the time of the offense. Felde testified at the penalty phase and urged the jurors to return the death penalty. His counsel urged the jury to return the death penalty in keeping with his agreement with Felde that a verdict of "not guilty and not guilty by reason of insanity" was the only acceptable verdict.

The foregoing prosecution was tried in Rapides Parish, Louisiana, on a change of venue due to extensive pro-trial publicity. *State v. Felde,* 382 So.2d 1384 (La. 1980). *State v. Felde* was the first first-degree murder case since 1976 where Caddo Parish prosecutors obtained the death penalty.

Felde was executed on March 15, 1988.

(16) *State v. Mack E. Forbes,* 362 So.2d 1385 (La. 1978) (per curiam); No. 104,937, First Judicial District Court.

Mack E. Forbes was indicted by a Caddo Parish grand jury for the first degree murder of Delores Edwards. Forbes was tried before a jury in November, 1977, and found guilty as charged. After a sentencing hearing, the jury recommended that Forbes be sentenced to life imprisonment.

The evidence adduced during trial showed that Forbes confronted Edwards and her boyfriend, James Green, in front of the Brown Owl Bar in Shreveport,

Louisiana. As the victim and James Green turned to walk away from Forbes to avoid a confrontation, the defendant started shooting at Green. He shot four times with three bullets striking Green. Forbes then turned to Delores Edwards, knocked her to the ground, held the pistol up to her chest and shot her twice in the chest at close range.

The State argued that the defendant had created a risk of death to two or more persons and that the offense was committed in an especially cruel and heinous manner. The defense countered with the argument that the offense was essentially a crime of passion arising out of domestic violence, as Forbes had shot his former girlfriend who was accompanied by her new boyfriend. Although Forbes had served a great deal of time in prison as a result of several burglary convictions, the State was not permitted to argue Forbes' substantial criminal record because they were not crimes of violence. The defense thus was able to exploit Forbes' apparent absence of previous criminal conduct.

(17) *State v. Glenn Ford*, 489 So.2d 1250 (La. 1986), *writ granted and remanded* 479 U.S. 1077, 107 S.Ct. 1272, 94 L.Ed.2d 133, *on remand* 503 So.2d 1009 (La. 1987), *writ denied* 498 U.S. 992, 112 L.Ed.2d 547, 111 S.Ct. 537, *rehearing denied* 498 U.S. 1075, 111 S.Ct. 803, 112 L.Ed.2d 864; No. 126,005, First Judicial District Court.

Glenn Ford was indicted for the first-degree murder of Isadore Rozeman, an elderly jeweler. The

jury found Ford guilty as charged and imposed the death sentence. The jury found as an aggravating circumstance that the murder was committed in the perpetration of an armed robbery.

On November 5, 1983, Mr. Rozeman's body was found by a friend in his home watch repair shop. Mr. Rozeman had been shot once through the head. A duffle bag was used to cover Mr. Rozeman's head when he was shot. A brown paper bag had been used as a glove to fire the weapon, and revealed a partial print consistent with Ford's.

The shop display cases had been emptied, of jewelry and Mr. Rozeman's pockets turned out.

Neighbors placed Glenn Ford, Mr. Rozeman's yardman, in the area near the time Mr. Rozeman had spoken with the friend who later found his body, the last time Mr. Rozeman was known to be alive.

Pawnshop receipts showed Ford had pawned jewelry similar to that taken from Mr. Rozeman's shop immediately after the murder. Ford had purchased a gun the morning before the murder and tried to sell one later that afternoon. A gunshot residue test was positive. Ford told a cellmate that he and two other men robbed Mr. Bozeman and that he shot him. Ford presented an alibi defense.

(18) *State v. Russell Foy, Sr.*, 439 So.2d 433 (La. 1983); Docket No. 114,783, First Judicial District Court.

Foy was arrested and indicted by a Caddo Parish grand jury on two counts of first-degree murder. Foy was tried by a jury on April 26, 1982, and found guilty as charged. Following a sentence hearing the jury unanimously recommended that Foy be sentenced to life imprisonment without benefit of probation, parole, or suspension of sentence.

On June 7, 1980, Carr Allen Corbin, his common-law wife, Betty Williams, and their two daughters were confronted by the defendant who directed Corbin to drive his automobile to a remote area in Caddo Parish. They were followed by an unidentified male in another car. There Russell Foy shot and killed Carr Corbin. Foy then left the Corbin vehicle and got into the other car. Shortly thereafter the automobile stalled as Ms. Williams tried to drive away and Foy's vehicle pulled up alongside her. Foy approached Ms. Williams and shot her three or more times. The two little girls were not harmed.

As an aggravating circumstance the prosecution argued that Foy knowingly created a risk of death or great bodily harm to more than one person. In mitigation, the defense urged the jurors to consider Foy's relatively young age, the absence of a prior significant criminal history, and that Foy was married.

(19) *State v. Roderick L. Gay*, 29,434 (La.App.2d Cir. 6/18/97), 697 So.2d 642; Docket No. 174,135-A, First Judicial District Court.

Roderick L. Gay was indicted for the first-degree murder of David L. Morris on March 24, 1995, and found guilty as charged. The jury was unable to agree on the penalty and Gay was therefore sentenced to life imprisonment.

David Morris was selling clothes out of the trunk of his car when Gay put a gun to the back of Morris's head and demanded "give me all your shit." When Morris turned, Gay shot him in the chest through the armpit. Gay then pressed the gun to Morris's side and fired again, severing his spinal column. Gay shot Morris yet again as he lay paralyzed in the street, with the shot entering Morris's temple. Morris's wife and daughter were present during the shooting.

After shooting Morris, Gay stole several armloads of clothing from the trunk of Morris's car. Witnesses identified Gay as the shooter. At trial Gay claimed he was intoxicated and that Morris was shot in a struggle over the gun that began because Gay thought that Marvin Young, a State's witness, was trying to "beat him" out of some money he gave Young for drugs.

At the penalty phase the State argued as the sole aggravating circumstance that the killing was committed in the course of an armed robbery. The defense presented testimony that Gay was intoxicated and a crack addict and Gay maintained that the shooting arose because of an argument over drug money.

(20) *State v. Demetric Gilliam*, 36,118 (La.App.2d Cir. 8/30/02), 827 So.2d 508, *writ denied* 2002-3090 (La. 11/14/05), 858 So.2d 422; Docket No. 209,258, First Judicial District Court.

Demetric Gilliam was convicted of the first degree murder of a three year old boy and sentenced to life imprisonment.

On August 18, 1998, Demetric Gilliam got together with his brother, Terance, and a friend, Larry White, and went looking for one Tyrell Odell. Mr. Odell had been giving Demetric trouble for several months, and the last straw was the robbery of a dice game a few days before where Demetric lost $4,500.00, part of some $10,000.00 supposedly stolen in the robbery.

When Gilliam saw Odell's car parked at the Hollywood Liquor Bank, he pulled up and stopped his car broadside, blocking Odell's car in. Odell, who had his former girlfriend, Teresa Bryant, her two children, and a friend, Eric Calhoun, in the car, reversed in an attempt to get away, colliding with the side of Gilliam's car as a result. Gilliam began to fire his .45 out of the window, part of the time firing blind as he ducked down the seat. Terance, with the assault rifle, and Larry White, with the shotgun, emerged from Gilliam's Grand Am and riddled Odell's car with gunfire, with some 25 bullets entering through every side of the vehicle. Every occupant of Odell's vehicle sustained gunshot wounds. The three year old victim, who had been shielded by Calhoun, jumped up when

Calhoun was shot and sustained a gunshot wound to the back of the head from the assault rifle. He was the sole fatality of the ambush.

Gilliam was arrested the next day as be cowered in the attic of a girlfriend's home, interrupted in his preparations to flee. Gilliam was indicted for first degree murder where there was a substantial risk of death or great bodily harm to more than one person. Gilliam was found guilty as charged and, the jury being unable to agree on a sentence, received life imprisonment without benefit of probation, parole or suspension of sentence. At the penalty phase, Gilliam's family members testified to his good character. Gilliam lacked any prior felony convictions.

(21) *State v. Bobby Ray Hall*, 388 So.2d 1164 (La. 1980) (per curiam); No. 110,856, First Judicial District Court.

Bobby Ray Hall was indicted by a Caddo Parish grand jury for the first degree murder of his wife, Ollie Mae Hall, in violation of La. R.S. 14:30. Hall was found guilty as charged by the jury. Following a sentencing hearing Hall was sentenced to life imprisonment at hard labor without benefit of probation, parole or suspension of sentence.

On March 24, 1978, Bobby Ray Hall got into an argument with his wife, Ollie Mae Hall. Shortly thereafter, Hall fired two shots at his wife, striking her in the arm and back. He was seen running from

the residence with a .12 gauge shotgun in his hand. In a recorded statement Hall admitted shooting his wife but claimed that he didn't mean to kill her.

The prosecution did not actively seek the death penalty in this case. The circumstances of the offense indicated that the killing arose out of a domestic disagreement and that Hall may have been under the influence of a mental or emotional disturbance at the time of the killing.

(22) *State v. Bobby Lee Hampton*, 98-0331 (La. 4/23/99), 750 So.2d 867, *certiorari denied* 528 U.S. 1007, 120 S.Ct. 504, 145 L.Ed.2d 390, *rehearing denied* 528 U.S. 1108, 120 S.Ct. 855, 145 L.Ed.2d 721 (2000); Docket No. 176,627, First Judicial District Court.

Bobby Lee Hampton was convicted of the first-degree murder of Russell Coleman during the course of an armed robbery and was sentenced to death.

On August 12, 1995, Hampton and two companions entered a Thrifty Liquor Store on Greenwood Road in Shreveport. Hampton shot Coleman three times in the back without warning. During the penalty phase, the jury learned of Hampton's prior convictions for aggravated battery and second-degree battery, attempted simple escape and attempted armed robbery. Evidence was also adduced regarding an unadjudicated armed robbery Hampton committed six days before the murder where the 27 year old Hampton pistol-whipped a Kroger grocery store

employee. Hampton's family members asked the jury to spare his life.

(23) *State v. Brandon Haynes*, 27,499 (La.App.2d Cir. 11/1/95), 662 So.2d 849, *writ denied* 95-2768 (La. 2/16/96), 667 So.2d 1050; Docket No. 166,637, First Judicial District Court.

Brandon Haynes was indicted for and convicted of the first-degree murder of Fang Yang. The jury was unable to agree on the penalty, so a sentence of life without benefit was imposed by the trial court.

Fang Yang was a 26 year old graduate student at LSU Medical School in Shreveport. On October 26, 1993, her body was found near the ten-story Bio-Medical Research Institute (BRI) building under construction at the medical school. She had been raped both anally and vaginally and cut and stabbed superficially before falling to her death from the roof of the ten-story building. Overnight surveillance film at the medical school showed construction worker Brandon Haynes reaching up to turn off the camera on the ninth floor of the medical school building which was connected to the BRI building. Fang Yang's wallet was found concealed in the wall of Haynes' home and human blood was present in his car. DNA testing confirmed that Haynes was the person who had raped Fang Yang. Blood was also found on the roof of the BRI building.

At trial Haynes' defense team admitted their client's guilt as to the kidnapping and rape of Fang

Yang, over their client's express objection. The defense concentrated on their claim that Fang Yang's fall was accidental, perhaps as she ran to try to escape Haynes. Haynes had no prior criminal convictions.

(24) *State v. Daniel Irish*, 00-2086, (La. 01/15/02), 807 So.2d 208, *certiorari denied* 537 U.S. 846, 123 S.Ct. 185, 154 L.Ed.2d 73; Docket No. 186,209, First Judicial District Court.

Danny Irish was convicted of the first degree murder of his landlord, contractor Russ Rowland, during the course of an armed robbery, and was sentenced to death.

Evidence at trial showed that Irish had discussed for several days a plan to rob and murder one of two local contractors, finally deciding on Rowland, to whom Irish owed back rent. Irish lured Rowland to his trailer on the promise of a rent check. When Rowland arrived, a co-defendant, who later pled guilty and testified against Irish at trial, shot Rowland in the stomach with a twelve-gauge sabot slug. Irish then shot Rowland in the head with a 30/30 as he begged for his life. Irish dragged the body into the trailer, but was unable to get his co-defendant to help him dispose of the body. He had planned to put the body in a sleeping bag and "sink" it in a near-by swampy area. Police arrived before he was able to carry out his plan.

At the penalty phase, Irish put on evidence that he had moved frequently as a child, and that his mother had been married five times. A defense expert diagnosed him as having an antisocial personality disorder.

(25) *State v. Edward W. Johnson, Jr.*, 27,522 (La.App.2d Cir. 12/6/95), 665 So.2d 1237; Docket No. 162,565, First Judicial District Court.

Edward Johnson, Jr., was convicted of the first-degree murder of Shreveport police officer Ron Dean during the execution of a drug search warrant on December 16, 1992. The jury sentenced him to life imprisonment.

Ron Dean was the first man on the entry team. He was wearing a black T-shirt with "POLICE" in big white letters across the front and back. He also wore a bullet-proof vest. The officers continuously announced their presence, yelling "Police, search warrant" and Dean attacked the door with a battering ram. Dean then kicked the door open. As he ran in, Johnson shot Dean twice. One bullet hit Dean in the left armpit, an area uncovered by the vest. Dean died due to severe hemorrhage as the bullet traveled through both lungs and his heart. Another bullet was found in the back of the vest. Another police officer was shot in the leg by Johnson, who sustained two or three minor gunshot wounds himself.

At trial, Johnson claimed that he did not hear the officers yelling and thought the officers were burglars, and was therefore acting in self-defense.

(26) *State v. Ray Jones, Jr.*, 386 So.2d 1363 (La. 1980); Docket No. 110,300, First Judicial District Court.

Ray Jones, Jr., was indicted by a Caddo Parish grand jury for the first-degree murder of his two and one-half month old son. After trial by jury, he was found guilty as charged. The same jury then recommended that Jones be sentenced to life imprisonment without benefit of probation, parole or suspension of sentence.

On January 18, 1979, Ray Jones, Jr., smoked a PCP cigarette in the home of his common-law wife. After shaving his head and removing all of his clothing, he choked his common-law wife into unconsciousness while chanting the word "satan." He then beat his young son and threw his body into the back yard. He was arrested a few blocks away while scuffling with two white men working in a vacant house. Jones screamed that he had been sent by God to kill all white people. Jones was immediately transported to the psychiatric ward of the LSU Medical Center in Shreveport. Medication had an immediate beneficial effect on Jones, who then recounted to the hospital staff and Shreveport Police the circumstances leading up to, and including, the offense. Jones explained

that he killed the child because he felt the child was Satan.

The State did not seek the death penalty in this case because of the presence of the obvious mitigating circumstance that Jones was under the influence of his voluntary intoxication. The prosecution nevertheless did advise the jury that if they found that the offense had been committed in an especially heinous, atrocious, or cruel manner that the death penalty was an available option. In mitigation, Jones presented evidence from the two members of the Sanity Commission regarding the defendant's intoxication and the PCP level found in his urine sample.

(27) *State v. Michael Edward King*, 395 So.2d 1367 (La. 1981) (per curiam); Docket No. 109,890, First Judicial District Court.

Michael Edward King was indicted by a Caddo Parish grand jury for the first-degree murder of Audria Renee Kellum in violation of La. R.S. 14:30. Following a jury trial the defendant was found guilty as charged. Thereafter the jury recommended that he be sentenced to life imprisonment without benefit of parole, probation or suspension of sentence.

The evidence at trial revealed that Michael Edward King lived in a common-law relationship with Audria Renee Kellum and her two children. In November of 1978, King came home one night carrying a pistol. He argued with Audria until she called the police to have him ordered out of the house. King

was twice ordered to leave the premises but feigned doing so. Upon re-entering the home he packed a suitcase. While in the process of leaving King fired two or three shots at Audria while she was seated in a chair only a few feet from him. The fatal wound severed her jugular vein after entering her right cheek. The offense was committed in full view of the victim's mother and children, who were all in the same room.

The prosecution pointed out the existence of two aggravating circumstances during the penalty phase of the trial, to-wit: that the offender created a risk of death or great bodily harm to more than one person and that the offense was committed in an especially heinous, atrocious or cruel manner. The State did not, however, actively seek the death penalty in the case because the prosecution felt that such a penalty was not warranted, the murder having arisen out of a domestic confrontation. The jurors were merely advised that if one of those aggravating circumstances were found that they could recommend the death penalty as an option. In mitigation, the defense adopted the evidence adduced at the guilt phase which attempted to show that King was intoxicated at the time of the killing and was under the influence of a mental disturbance.

(28) *State v. James Allen Lee*, 395 So.2d 700 (La. 1981); No. 105,594, First Judicial District Court.

James Allen Lee was indicted by a Caddo Parish grand jury for the first-degree murder of Jerry Dennis committed on June 18, 1977. Defendant entered a dual plea of not guilty and not guilty by reason of insanity. Lee's jury rejected his defense, convicting him as charged. The jury then unanimously recommended that Lee be sentenced to life imprisonment at hard labor without benefit of parole, probation or suspension of sentence.

On June 18, 1977, James Allen Lee went to the Shady Oaks Cafe, a neighborhood bar and restaurant. Jerry Dennis owned and operated the cafe on the night in question. Dennis and Lee were acquaintances. Initially Lee was at the cafe at approximately 12 p.m., complaining to Dennis and two of the patrons that someone had taken his car keys. A patron told Lee to leave the cafe as no one there had his keys.

Lee returned to his house and retrieved a shotgun. Lee returned to the cafe and shot Jerry Dennis in the throat and chest, killing him.

Lee's trial was extraordinary. He was a self-proclaimed born-again Christian and religious zealot. He repeatedly and vigorously recited scripture to all who would listen for the duration of the trial. Lee also was a huge physical specimen; his muscular build was like that of a professional weight lifter. On more

than one occasion Lee was handcuffed and shackled. He repeatedly interrupted the trial with outlandish and sometimes violent behavior. His conduct ranged from the singing of the National Anthem before the jury to a physical confrontation with six large deputy sheriffs. He often interrupted argument and testimony with loud recitations of scripture.

The death penalty was not sought by the prosecution in this case for obvious reasons. However, the jury was made aware that the death penalty was a viable option, though no one encouraged the jury to return the same.

(29) *State v. Nick Nicholson*, 437 So.2d 849 (La. 1983); Docket No. 119,116, First Judicial District Court.

Nick Nicholson was indicted by a Caddo Parish grand jury for the first-degree murder of Kelly Ann Gramm in violation of La. R.S. 14:30. Nicholson was found guilty as charged by unanimous verdict. The same jury was unable to unanimously agree on the penalty. The trial court subsequently sentenced Nicholson to spend the remainder of his life in prison at hard labor without benefit of probation, parole, or suspension of sentence.

The evidence at trial showed that Kelly Ann Gramm, the only night attendant at a Citgo Quick Mart, was attacked by Nicholson with a pocket knife at approximately 2 a.m. The victim sustained 39 stab wounds over her head and body. A piece of the knife

blade was found lodged in her head. Having brutally murdered his victim, Nicholson grabbed the cash register and ran to his automobile to make his escape. He was quickly apprehended by a police officer who was responding to a silent alarm at the Citgo Quick Mart and saw Nicholson's vehicle leaving the parking lot. The register was on the front seat of Nicholson's car.

The State sought the death penalty on the basis of two aggravating circumstances, to-wit: that the murder was committed during the course of an armed robbery and that it was accomplished in an especially cruel and heinous manner. The defense urged several arguments in mitigation, including Nicholson's youth (18 years of age) and that he had no significant prior criminal history. The defense also put on numerous character witnesses in the penalty hearing, urging the jury to spare Nicholson's life.

(30) *State v. Cecil Odom*, 33,340, (La.App.2d Cir. 5/10/00), 760 So.2d 576, *writ denied* 2000-1816 (La. 6/29/01) 794 So.2d 821; Docket No. 189,353, First Judicial District Court.

Cecil Odom was found guilty as charged of two counts of First Degree Murder. The jury was unable to agree on the penalty so the defendant received the mandatory life sentence for both counts. Odom stabbed his wife but she survived. He stabbed and killed his adopted teenaged daughter and her

natural grandmother. Evidence showed Odom was obsessed with the girl and angry at her contempt for him. Odom had entered a plea of not guilty and not guilty by reason of insanity. The defendant had previously been diagnosed with a mental illness and had a family history of mental illness.

The defense adduced much evidence at the guilt phase about Odom's mental illness and his family history. At the penalty phase of the trial the defense put on evidence about his horrible childhood and his father's physical abuse of Odom and sexual abuse of Odom's sister. The defendant claimed he had also been sexually abused by his uncle and one other relative.

(31) *State v. Bobby Ray Reed*, 448 So.2d 794 (La.App. 2d Cir. 1984), *writ denied* 452 So.2d 696 (La. 1984); Docket No. 120,263, First Judicial District Court.

Bobby Ray Reed was indicted by a Caddo Parish grand jury for the first-degree murder of Tempie Ann Jones. At the penalty phase of the trial the jury could not unanimously agree on the imposition of the death penalty. Reed therefore was sentenced to life imprisonment at hard labor without benefit of parole, probation or suspension of sentence.

On the evening of January 15, 1982, Reed went to the victim's home where they argued over money. Reed beat the victim with his fists, cut her with a knife and pistol-whipped her. He forced her into the

trunk of her automobile and drove to a service station where he purchased twenty-five cents worth of gasoline and placed it in a plastic bottle. Reed then drove his victim to a secluded area, poured gasoline into the trunk and set the trunk ablaze. Tempie Ann Jones died two weeks later of the burns she received.

The State argued, as aggravating circumstances, that Reed was engaged in the perpetration of an aggravated arson, that the offense was committed in an especially heinous, atrocious, or cruel manner, and that Reed had a substantial criminal history. In mitigation, the defense argued that Reed was intoxicated at the time of the offense and could not formulate the requisite specific intent to kill. In addition, the victim's mother testified at the penalty hearing that she preferred life imprisonment for Reed over the death penalty.

(32) *State v. Myron Osha Smith*, 31,955 (La.App.2d Cir. 5/5/99), 740 So.2d 675, *writ denied* 2000-1404 (La. 2/16/01), 785 So.2d 840; Docket No. 178,758, First Judicial District Court.

Myron Osha Smith was indicted for the first-degree murder of fourteen year old Andre Brooks. He was found guilty as charged and the jury agreed on a life sentence.

On November 4, 1995, Brooks was in a friend's home when Smith shot fourteen bullets through the house where seven children cowered in fear. The

shooting was apparently in retaliation for an earlier drive-by.

During the penalty phase Smith's mother begged for her son's life, bringing some jurors to tears.

(33) *State v. Calvin Tolbert*, 30,821 (La.App.2d Cir. 8/19/98), 716 So.2d 949, *writ denied* 98-2562 (La. 1/15/99), 736 So.2d 207; Docket No. 171,362, First Judicial District Court.

Calvin Tolbert was convicted of the first-degree murder of Wilma Liberto. The jury was unable to agree on a sentence and so Tolbert was sentenced to life imprisonment without probation, parole or suspension of sentence.

On August 1, 1994, Tolbert and two companions entered Liberto's Grocery in the Allendale area of Shreveport while two more companions waited outside. Mrs. Liberto, then 77 years old, and her son Paul ran the grocery. Tolbert stood in line and when he got to the counter he shot Mrs. Liberto and Paul Liberto once each. Tolbert never said a word, and the victims only knew there was a robbery happening when the shots were fired. Mrs. Liberto was killed. Paul Liberto was rendered a paraplegic, and died less than one year after the trial.

During the penalty phase, the State presented evidence that the 17 year old Tolbert had a juvenile adjudication for illegal discharge of a weapon and that he had a bad discipline record at Caddo

Correctional Center since his incarceration. The defense presented Dr. Mark Vigen, who testified that Tolbert was of "borderline" intelligence. Tolbert's family pleaded for mercy.

(34) *Slate v. Nolan Turner*, 37162, (La.App.2d Cir. 10/29/03) 859 So.2d 911, *writ denied* 2003-3400 (La. 3/26/04) 871 So.2d 347; Docket No. 203,173, First Judicial District Court.

Nolan Turner was convicted of First Degree Murder for the robbery and killing of Doyle Wayne Winn at the Jewella Tire Shop. The jury unanimously imposed a life sentence.

The Winn family owned and managed the tire business where the shooting took place. Turner along with co-defendant Jimmy Charles Coleman entered the building around 5 p.m. on July 8, 1999. Doyle Winn along with his sons Heath and Garrett Winn and a child from the neighborhood were in the office area of the shop. Turner pointed a gun at the victims and demanded that they go to the back of the store. The three boys complied and got on the floor in the back of the shop. A scuffle ensued between Doyle Winn and Turner. Doyle Winn called to Heath for help so Turner shot Heath twice, paralyzing him permanently. Doyle Winn was also shot twice and died from his injuries.

At the guilt phase, the State introduced the testimony of Heath and Garrett Winn. Heath had

chosen Turner from a photo line-up following the shooting and again identified him before the jury. An employee of the church across the street testified that she was waiting to pull onto Jewella when she heard shots and saw the robbers exiting the store. She followed the man matching Turner's description and saw him with a gun. She too chose Turner from a six-person photo line-up following the shooting. Turner gave an alibi that was later refuted.

At the penalty phase, the State called Heath and Garrett Winn and Doyle Winn's fiancée Helen Lucking as victim impact witnesses. By stipulation between the State and defense, the defendant's prior convictions of possession of cocaine and illegal possession of stolen things were introduced to the jury.

General evidence of good character was introduced by the defense through various friends and family members, including Turner's father who is incarcerated in Huntsville, Texas. Evidence of his relationship with his young son in Baton Rouge was also introduced.

(35) *State v. James Tyler, III*, 97-0338 (La. 9/9/98), 723 So.2d 939, *certiorari denied* 526 U.S. 1073, 119 S.Ct. 1472, 143 L.Ed.2d 556, *rehearing denied* 526 U.S. 1166, 119 S.Ct. 2066, 144 L.Ed.2d 230; Docket No. 175,282, First Judicial District Court.

James Tyler, III, was indicted for first-degree murder in the death of Jock Efferson. Tyler was found

guilty and sentenced to death. The jury found as aggravating circumstances that Tyler was engaged in the perpetration of a robbery and that he knowingly created a risk of death or great bodily harm to more than one person.

On May 29, 1995, at around 9:30 p.m., Jock Efferson, Denise Washington and Rahsaan Roberson were working in a Pizza Hut on Greenwood Road in Shreveport, Caddo Parish, when James Tyler, III, walked up to the drive-through window and began talking to Efferson about buying a pizza. He walked off and several minutes later entered the restaurant through the rear entrance used by employees. Tyler had a handgun in one hand and a ski mask in the other. He ordered Efferson to open the cash register, which he did. Tyler then ordered the three employees to the cooler, ordered them to lie on the floor and shot them each in the head. Washington and Roberson remained conscious and when they thought Tyler was gone they got up and locked the back door. Washington's boyfriend arrived and rendered assistance to them. Efferson died of his wounds the next day.

The evening of May 30, 1995, Sharlot Tedder, a prostitute who had acted as a confidential informant in the past, related to police that she had stayed with a black male calling himself Marcus "Cricket" Tomlin at the Palomar Hotel across the street from the Pizza Hut. On the 29th, he left at around 9:30 saying he had to "do" something and returned about a half hour later nervous and sweating. She knew him to possess

a .22 caliber revolver. Tedder saw emergency vehicles at the Pizza Hut about 10 p.m., and asked "Tomlin" if he "did that across the street." He replied "yes," and offered to tell her about it, but she declined. "Tomlin" now had a large wad of money and bought a large amount of cocaine. "Tomlin" later confided a number of details of the robbery to her. He seesawed between remorse, saying God wouldn't forgive him for what he had done, and disbelief that two of the victims were in fair condition after being shot in the head. Upon learning of Efferson's death from the television news, he remarked "one down, two to go." He then told Tedder to come back into the room with him, saying he'd already "got three . . . what's one more?" Tedder became fearful for her life after he confided this, called police and participated in setting up his arrest. Upon his arrest, it was determined that Tomlin, in fact, was James Tyler, III.

At the penalty phase, defense counsel presented a number of psychiatric experts who testified as to Tyler's disturbed mental condition going back to his troubled childhood. The State presented Elvis Hopson, the manager of a fast food restaurant in St. Louis, Missouri, who had been shot by Tyler, his employee, during a robbery Christmas Eve, 1994. Tyler had not yet been arrested for this robbery and attempted murder before the murder of Jock Efferson.

(36) *State v. Ricky Washington*, 407 So.2d 1138 (La. 1981); Docket No. 110,490, First Judicial District Court.

Ricky Washington was indicted by a Caddo Parish grand jury for the first-degree murder of Grady Haynes in violation of La. R.S. 14:30. The jury returned a verdict of guilty of first degree murder. After deliberation, the jury was unable to unanimously agree upon a sentence recommendation. The trial court thereupon sentenced Washington to life imprisonment pursuant to La. C.Cr.P. Article 905.8.

The evidence at trial showed that on February 1, 1979, Grady Haynes, the owner and live-in manager of a grocery store, was shot to death behind the counter of his store. He was shot once in the back of the head with a .32 caliber handgun. The defendant's fingerprint was found at the scene. The cash register drawer was open. Washington gave two exculpatory, yet conflicting, statements to authorities, blaming different individuals for the death of Haynes. A search conducted at Washington's home produced the murder weapon.

The sole aggravating circumstance urged by the State was that the murder was accomplished during the course of an armed robbery. The defense proffered substantial arguments in mitigation, including the offender's youth (Washington was 18 years old), the absence of a prior criminal history, that others were involved (presumably he was less culpable), and Washington's diminished mental capacity.

(37) *State v. Thadius Webb*, 32607 (La.App.2d Cir. 1/26/00), 750 So.2d 479, *writ denied* 2000-0593 (La. 12/08/00), 775 So.2d 1078; Docket Number 184,452, First Judicial District Court.

Thadius Webb was convicted of the first-degree murder of Carl Ivey during the course of an armed robbery. After penalty phase, the jury unanimously agreed to a life sentence.

Carl Ivey met the defendants at the Pinstripe Lounge and agreed to give them a ride to Amos Desadier's house in Cedar Grove. When they arrived in the alley behind Desadier's home, Webb and co-defendant David Thompson attacked Ivey. Thompson was the ring leader and the evidence showed that he stabbed and beat Ivey while Webb held him down. Ivey's body was put in the backseat of his car and driven by Thompson to Wallace Lake Road. Webb helped dump the body in the woods. Torture wounds were identified on Ivey's legs by the coroner. Three fishing poles were taken from the car by Thompson. The evidence showed Thompson to be the actual killer and Webb to be only a principal. In addition, Webb did not have a criminal record of any kind.

(38) *State v. Corey D. Williams*, 2001-1650, (La. 11/01/02), 831 So.2d 835, *writs denied* 2005-1556 (La. 2/17/06), 921 So.2d 105; Docket No. 193,258, First Judicial District Court.

Corey Williams was convicted of the first degree murder of Jarvis Griffen, a young pizza delivery

driver, during the course of an armed robbery, and was sentenced to death on October 28, 2000. On the night of January 12, 1998, life-long friends Corey Williams and Gabriel Logan met up at Renee Iverson's residence at [Home Address Omitted] in Shreveport, Caddo Parish, La. Renee had several friends over at her house when the group decided to order from Pizza Hut.

There were six people in the house when Jarvis Griffen, a 26 year old long time employee of Pizza Hut, delivered the pizza. Gabriel Logan exited the house as Griffen was standing in the doorway collecting money for the pizza. Logan walked outside and talked to Corey Williams who was standing in front of the house. During their discussion Logan handed Corey Williams a pistol. Corey Williams then approached Jarvis Griffen as he reentered his vehicle. Williams fired several shots at the victim at point blank range with his arms outstretched clutching the pistol with both hands. Jarvis Griffen died of a gunshot wound to the chest which caused massive damage to both lungs, the arteries and the heart.

Gabriel Logan then ran to the victim's vehicle after it crashed into a house a short distance away. Logan entered the vehicle, pulled Griffen's body out onto the ground, rifled his pockets, reentered the vehicle, tried unsuccessfully to steal the car and finally exited with the money bag and a pizza. Williams fled the scene with the murder weapon immediately after the shooting.

In his statement, Williams said that he told the victim prior to shooting him to "give me the money." When the victim moved Williams shot him because "I wasn't fixin' to get killed."

At the penalty phase, the State introduced evidence of Williams' juvenile felony convictions for illegal use of a weapon and attempted simple robbery. Victim impact evidence was limited to the testimony of Griffen's uncle.

The jury also learned of Williams' extensive disciplinary records at both Caddo Correctional Center pending trial and during his juvenile incarceration. These included threats and violence directed against correctional officers as well as other inmates and an escape from juvenile detention. Defense expert Mark Vigen, PhD, opined that Williams had an antisocial personality disorder, was dangerous and could kill again.

On appeal, the Supreme Court affirmed the conviction and remanded for a hearing to determine if Williams is mentally retarded, under *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). Williams was found by the trial court judge to be retarded. Williams' death sentence was vacated and he was sentenced to life imprisonment.

(39) *State v. James K. Williamson*, 27,871 (La.App.2d Cir. 04/03/96), 671 So.2d 1208, *writ denied* 96-1143 (La. 10/04/96), 679 So.2d 1380. *On retrial* 35,122 (La.App.2dCir. 01/23/02), 805 So.2d 1235, *writ denied* 2002-0707 (La. 02/07/03), 836 So.2d 94; Docket No. 164,901, First Judicial District Court.

On June 19, 1993, James K. Williamson, entered the Soap Opera Washateria on Pines Road in Shreveport, Louisiana, and attempted to abduct Vickie Ferguson (later Perkins), his former girlfriend. Estal Thompson and his sons, Michael and Scott, intervened and all three were shot by defendant. Estal died at the scene while his sons, though seriously injured, survived. Williamson forced Vickie into his car and drove off with her. When his car broke down he forced Vickie down into a drainage ditch and began choking her. An armed motorist pointed his gun at Williamson and threatened to shoot him if he did not stop. Williamson fled into the woods and was arrested the next day.

Prior to his trial in 1995 Williamson filed a motion to dismiss his appointed counsel and sought to try the case himself. The trial court denied the motion. The jury found Williamson guilty of first degree murder and sentenced him to life imprisonment. Williamson's conviction and sentence were affirmed on appeal, but Williamson won a new trial through a federal writ of habeas corpus on his claim that he should have been allowed to represent himself at

trial. Williamson was re-tried, this time for second degree murder, and was found guilty as charged.

(40) *State of Louisiana v. Aaron Christopher Wilson, State v. Wilson, remanded* 2003-1229, (La. 3/30/05), 899 So.2d 551; *affirmed* 40,767, (La.App.2dCir. 8/23/06), 938 So.2d 1111; Docket No. 213,012 First Judicial District Court.

Aaron Wilson was convicted of First Degree murder and sentenced to death for the kidnapping, robbery, rape and murder of Vicki Lynn McGraw. At approximately 9 p.m. on December 23, 2000, Wilson along with three friends (Leon Bagley, Torius Scroggins & Derrick Bouya) were riding about Shreveport looking for a person to carjack and rob. They pulled behind a white Chevy Blazer SUV and saw that only one person was in the vehicle. They followed the SUV driven by Mrs. McGraw into the Southern Oaks apartment complex on 70th Street. When she stepped out of her car, Wilson, armed with a .380 semi-automatic handgun, and co-defendant Derrick Bouya, armed with an assault rifle, forced her back into her vehicle at gunpoint. Mrs. McGraw drove them to a local ATM where she was forced to withdraw money from her account and give it to one or both of the men. Bouya then got in the driver's seat and drove the SUV south of town for approximately twenty miles. Wilson was in the backseat with Mrs. McGraw.

During the ride, Wilson forced her to disrobe and raped her orally, vaginally, and anally. She defecated

on the backseat of the vehicle. When Mrs. McGraw asked to use the restroom, Bouya pulled the car onto the side of the rode. While Mrs. McGraw was squatting down next to the truck defecating, Wilson shot her in the top of the head. The two men drove away leaving her body on the side of the road where it was discovered the next morning by a resident looking for her lost dog. Mrs. McGraw's truck and cellular phone were recovered several days later after being used by the various persons involved. In addition, her credit cards were used to purchase clothing, jewelry and other items at local malls.

At the jury trial, the State introduced the taped confession of the defendant given at the time of his arrest. In the statement, he admitted to the vaginal and oral rape of Mrs. McGraw as well as to being the shooter. DNA expert Connie Brown of the North Louisiana Crime Lab testified that Wilson's DNA was found on the vaginal swab taken during the autopsy. The former deputy coroner and a forensic pathologist, Dr. Stephen Cogswell, testified that there was damage to Mrs. McGraw's anus that was indicative of forced penetration.

The defense called the defendant to testify on his own behalf. Although he again admitted to the oral and vaginal rape of Mrs. McGraw, he denied his role as the shooter. He testified that he lied to the police because he was scared of Derrick Bouya. Wilson told the jury that Bouya was the actual shooter. In addition, Wilson's father and aunt testified regarding

Wilson's relationship with his mother who suffered from multiple sclerosis.

At the penalty phase, the State presented the testimony of co-defendant Derrick Bouya. A plea agreement between Bouya and the State guaranteed him a plea to second degree murder and a life sentence if he gave useful and truthful testimony at the Wilson trial. Bouya testified consistent with the statement he gave police following his arrest. He admitted to his role in the robbery and carjacking of Mrs. McGraw. He also admitted that he received clothes and jewelry charged on her credit card, used her cell phone and drove her vehicle after her murder. As he stated previously to police, he testified that Wilson was the shooter of the fatal bullet. In addition, the State called Wanda Simpson and James Stroud, siblings of the victim for victim impact evidence.

The defense called several family and friends of the defendant to testify that he was polite, respectful and a generally good person who had gotten involved with the wrong crowd and drinking. However, facts of the defendant's expulsion from high school and subsequent enrollment in an alternative school were elicited from these witnesses by the state. The cause of the expulsion was not admissible and not presented to the jury. In addition, the defendant's wheelchair-bound mother asked the jury to spare her son's life. Finally, the defendant again took the stand and recounted the story he had told the jury during the guilt phase of the trial. He continued to deny

responsibility for the death of Mrs. McGraw by blaming Bouya for the shooting.

During its rebuttal case, the State called witnesses to impeach the testimony given by the defendant regarding a prior conviction. The defendant's statement to the arresting officer was inconsistent with the story he presented the jury about the incident. The jury returned a penalty of death, finding as the sole aggravating circumstance that the defendant committed the killing in the course of a robbery, rape and kidnapping.

Wilson's appeal was stayed, pending the outcome of *Roper v. Simmons*, 540 U.S. 1160, 124 S.Ct. 1171, 157 L.Ed.2d 1204 (2004), regarding the constitutionality of the imposition of the death penalty on murderers who were under the age of eighteen at the time of the offense. Pursuant to *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), Wilson's death sentence was vacated, and he was sentenced to life imprisonment.

(41) *State v. Brandy Holmes*, 2006-KA-2988 Louisiana Supreme Court; Docket # 226,819, First Judicial District Court

Brandy Holmes and Robert Coleman were indicted for the first degree murder of Rev. Julian Brandon and the attempted first degree murder of his wife, Alice Brandon, as well as the first degree murder of Terrance Blaze. Holmes went to trial on the first degree murder of Rev. Brandon on February

6, 2006, in Caddo District Court and was convicted and sentenced to death.

Holmes and Coleman entered the Brandon home in rural Caddo Parish during the evening hours of New Year's Day 2003. After pushing their way into the front door of the Brandon residence, Julian Brandon, a retired Baptist preacher, was shot at near contact range under the chin with a .380 caliber handgun. The projectile separated into two pieces. One piece entered his brain, while the other piece exited the top of his head and was later recovered from the ceiling of the dining room adjacent to the front entryway. Julian Brandon collapsed.

Mrs. Alice Brandon was taken to the rear bedroom and made to lie down. Alice Brandon was interrogated about her valuables and begged for her life. A pillow was placed over Mrs. Brandon's face, and she was shot in the head and left for dead. The attention of the intruders was again focused on Rev. Brandon as they observed him struggling with his wounds, and they attacked Rev. Brandon a second time. At least three separate Chicago Cutlery style knives from the Brandon's kitchen were used in this second attack. Rev. Brandon received slashing cuts to his nose and face in addition to stabbing wounds on the top and rear of his head. The attack to the rear of Rev. Brandon's head was delivered with such force that one of the knives shattered; that knife was found in pieces at the scene. The offenders cut his throat by multiple starting/stopping incisions starting from the front right, across the front of his neck and around to

the back of his head. Rev. Brandon was repeatedly stabbed in the upper chest with wounds penetrating up to 6 inches, and was also stabbed in the back where a six-inch knife was found imbedded up to the handle. Rev. Brandon also had a large contusion from blunt force trauma on his forehead.

Several days passed before the Brandons were discovered. A family friend, who missed the Brandons from regular phone contacts and attendance at morning and evening Sunday services went to the home and found the couple on January 5, 2003. Mrs. Brandon was still alive and was transported by helicopter to the hospital. Mrs. Brandon continues to live in a severely impaired state as a result of the gunshot wound to the head.

After the discovery of the crime scene, the Caddo Sheriff's Office investigation gained momentum with a call from persons at a nearby apartment complex. It was learned that shortly after New Year's Day Brandy Holmes was in a nearby apartment complex trying to sell jewelry and making statements about killing an old couple down the road by a church. Detectives went to the Holmes' trailer, which was just around the corner from the homicide scene, and contacted Holmes, Coleman and other family members. The group agreed to go to the detective office for interviews. Coleman denied involvement but displayed cuts on his right hand. Holmes made several statements over the course of the next two days that implicated her and others as being involved in the homicide.

Holmes made at least six separate statements to authorities that related to the Brandon homicide. In most of these statements, Holmes implicated herself and others to varying degrees. Of the four interviews that were taped, Holmes destroyed the one in which she unequivocally admitted her role as the shooter and active participant in all the events concerning both Rev. Brandon and Mrs. Brandon. Holmes destroyed this tape by sneaking it into the ladies' room and flushing the magnetic tape down the toilet. Investigators also noticed that after Holmes' bathroom visit, she was no longer wearing some of the jewelry they had observed earlier.

In all but her first interview with detectives, Holmes described various details of the homicide with great precision. She admitted that she had stolen her father's .380 handgun while visiting him in Mississippi. She repeatedly acknowledged her presence and involvement in the attack on the Brandons, and on numerous occasions acknowledged her willingness to kill both Reverend and Mrs. Brandon. During her taped statements to Caddo deputies, Brandy Holmes admitted to bleaching her boots and burning her jacket stained with blood from Reverend Brandon's neck wound.

During her contact with investigators Holmes further revealed that on January 4, 2003, she took two of her nephews to view the bodies of Rev. Brandon and Mrs. Brandon. Her younger nephew later corroborated Holmes' account of this visit to the scene of the murder. The older nephew did not enter the

residence, but Holmes' nine-year-old nephew went in with his aunt and saw Rev. Brandon lying in a pool of blood, and also heard Mrs. Brandon screaming from another room in the house. Holmes and her nephews were seen going to the Brandon residence together. The same witness observed the nephews hurriedly leaving the Brandon residence without their aunt.

The investigation revealed and the evidence showed a close link between Holmes and Coleman. Holmes and Coleman traveled from Mississippi, where they lived together as girlfriend and boyfriend, to Shreveport on Christmas Eve 2002. They were picked up by Holmes' mother and resided in her trailer while the couple was in Shreveport. They brought with them the .380 caliber handgun that belonged to Holmes' father. That handgun was determined to be the murder weapon both by Holmes' admission and by ballistics comparison of projectiles and shell casings.

The items that were known to have been stolen from the Brandon residence included jewelry, particularly a multi-colored bracelet, and bankcards. There was an attempt to use one of the Brandon's bankcards where an incorrect PIN was used at an ATM in a nearby convenience store. In addition, Holmes and Coleman were recorded minutes later and just up the street on a Hibernia bank surveillance video trying to use a bankcard, again with the incorrect PIN number.

Many incriminating items were recovered from the Holmes' trailer where the two murderers had

stayed. Among those items was a clear plastic food service glove found in the rain gutter of the trailer that contained a multi-colored bracelet and a pearl bracelet. Rev. Brandon's daughter identified the multi-colored bracelet as the bracelet she had given her mother some time earlier. A box of these food service gloves was recovered from the bedroom shared by Coleman and Holmes. The food service gloves had a diamond pattern consistent with patterns in blood transfer stains observed at the Brandon residence. Additionally, a pillow was found in the Holmes' bedroom with a bullet hole through it. That pillow was not the one used to cover Ms. Brandon's face when she was shot, but was apparently a "practice" pillow.

In the same rain gutter that contained the multi-colored bracelet, three fired .380 cartridge casings were found. Investigators went to Holmes' father's residence in Mississippi. There her father took detectives to a location where he had fired the .380 handgun that was discovered missing at the time of Coleman and Holmes' departure from Mississippi. One of the cartridge casings found in the gutter was matched to a .380 cartridge casing recovered from that location in Mississippi. During analysis at the crime lab, Rev. Brandon's DNA was found on swabs taken from the fired cartridge casings found in the gutter. The portions of the .380 projectile that were recovered from Rev. Brandon's brain and dining room ceiling were matched to a projectile recovered from a tree pointed out by Holmes' father at the same location in

Mississippi where investigators had recovered the cartridge casing.

Victim impact testimony from family members was introduced at penalty phase. That testimony consisted of two family members testifying about the impact of this crime upon the Brandon family, and specifically upon Alice Brandon.

Evidence of the unadjudicated attempted murder of Mrs. Patricia Camp and the unadjudicated homicide of Terrance Blaze were also admitted. On December 27, 2002, Holmes made a 911 call from her mother's house in reference to a gated community located very close to her mother's trailer known as "Knob Hill." The call was an attempt to gain an access code for the gate at the front of that community. No access code was given to Holmes during that call; however, Holmes was able to get into the neighborhood. Later that same day, Holmes attempted to get into the residence of Mrs. Patricia Camp by ringing the doorbell and asking to use the phone. Mrs. Camp spoke with Holmes, but denied her entry to her house. Mrs. Camp saw Holmes again two days later, again while Holmes was trying to gain entry to her residence. Mrs. Camp did not let Holmes in on this subsequent attempt either. Holmes admitted in a statement to authorities that "If she would have opened that door, she would have been like Mr. Brandon" and "My plan was to get somebody on the hill that night."

Evidence of the Terrance Blaze homicide came into play when, as part of the Brandon investigation, Holmes directed authorities to Blaze's body. High velocity blood spatter and other bloodstains were found in Holmes' mother's vehicle and on Robert Coleman's pants. The significance of those stains was that Terrance Blaze was shot and bled in Holmes' mother's vehicle and that Robert Coleman was likely the driver. Expert testimony established that Blaze was most likely shot from the rear seat of the vehicle, not the driver seat. Holmes confessed in a letter to a prosecutor that she killed Terrance Blaze. Blaze was shot in the back of the head with a .380 caliber weapon and the bullet was recovered from his skull. A cartridge casing found near the location Blaze's body was dumped was matched to the cartridge case found in Mississippi.

Robert Coleman was convicted in a separate trial and sentenced to death as well. His case is pending appeal.

ARGUMENT

Article 905.9 of the Louisiana Code of Criminal Procedure requires this Honorable Court to review Brandy Aileen Holmes' sentence of death to determine whether or not it is unconstitutionally excessive. This query is guided by Louisiana Supreme Court Rule 28, Rule 905.9.1, § 1, which provides for capital sentence review as follows:

> Section 1. Review Guidelines. Every sentence of death shall be reviewed by this court to determine if it is excessive. In determining whether the sentence is excessive the court shall determine:
>
> (a) whether the sentence was imposed under the influence of passion, prejudice or any other arbitrary factors, and
>
> (b) whether the evidence supports the jury's finding of a statutory aggravating circumstance, and
>
> (c) whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

This is accomplished by considering both the defendant and the offense he committed. *State v. Celestine*, 443 So.2d 1091 (La. 1983), *certiorari denied* 469 U.S. 873, 105 S.Ct. 224, 83 L.Ed.2d 154 (1984).

Section 1(a)

A death sentence imposed under the influence of passion, prejudice or any other arbitrary factors is constitutionally excessive and must be vacated. The State submits that a review of the record fails to disclose the presence of any arbitrary factor which would have prejudiced appellant. The State submits that there is no error which created a substantial risk that Coleman's death sentence was imposed in an unjust manner.

There was no indication that the death sentence was imposed under the influence of passion, prejudice or any other arbitrary factors. The defendant and her victim were of the same race and the record reflects no racial prejudice as a factor in the trial.

Section 1(c)

The final question before this Court is whether the sentence in this case is disproportionate to the penalty imposed, considering both the crime and the defendant.

Article I, § 20 of the Louisiana Constitution and Louisiana Supreme Court Rule 28 require a comparative proportionality review to determine whether the sentence herein is disproportionate to the penalty imposed in similar cases within the same parish. The review requires a comparison of both the crime and the defendant.

The State's sentence review memorandum lists 41 first-degree murder convictions in the First Judicial District (Caddo Parish) in which sentence was imposed after January 1, 1976. The death penalty was imposed in sixteen of these cases.[1]

In *State v. Edwards, supra*, at 914, this Honorable Court reviewed First Judicial District Court death penalty cases involving murders committed during the perpetration of an armed robbery, as well as numerous other armed robbery death penalty cases on a statewide basis, noting that "this Court has consistently affirmed death penalties in cases involving killing during armed robberies."

More recently, the Court noted "on a statewide basis, cases are legion in which this Court has affirmed capital sentences based primarily on the jury's finding that the defendant killed the victim in the course of an armed robbery or attempted armed robbery." *State v. Irish, supra*, at 217.

In the instant case appellant and her confederate shot and stabbed an elderly minister and shot his wife, killing the husband and rendering the wife in an impaired state. Appellant also committed an unrelated murder shortly thereafter. The State submits that the death penalty is not disproportionate for this offense and this offender.

CONCLUSION

The State proved beyond a reasonable doubt that Brandy Aileen Holmes murdered Julian Brandon in the course of a robbery, as well as proving the other aggravating factors. This type of first-degree murder warrants the imposition of the death penalty.

The State respectfully submits that the sentence imposed herein should be upheld.

Respectfully submitted,

/s/ Catherine M. Estopinal
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ASSISTANT DISTRICT ATTORNEY

CERTIFICATE

I HEREBY CERTIFY that a copy of the foregoing sentence review memorandum has been mailed to:

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/s/ Catherine M. Estopinal
CATHERINE M. ESTOPINAL

APPENDIX 2

IN THE SUPREME COURT OF THE
STATE OF LOUISIANA

No. 2006-KA-2988

STATE OF LOUISIANA, *Plaintiff-Appellee*

v.

BRANDY AILEEN HOLMES, *Defendant-Appellant*

Appeal from Conviction
and Death Sentence Imposed

In the First Judicial District, the Parish of Caddo,
No. 226,819, Hon. Scott J. Crichton, Presiding.

THIS IS A DEATH PENALTY CASE

APPELLANT'S CAPITAL SENTENCE REVIEW MEMORANDUM

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State v. Washington, 407 So.2d 1138 (La. 1981).....17

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Williams v. Maggio, 679 F.2d 381 (5th Cir. 1982).....2

Woodson v. North Carolina, 428 U.S. 280 (1976).....17

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La. C.Cr.P art. 882(A) 25

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Other Authorities

Andrea Shapiro, *Unequal Before The Law: Men, Women And The Death Penalty,* 8 Am. U.J. Gender Soc. Pol'y & L. 427 (2000) 21

Janice L. Kopek, *Avoiding a Death Sentence in the American Legal System: Get a Woman to Do It*, 15 Cap. Def. J. 353 (2003) 21

Victor L. Streib, *Symposium: Death Penalty for Battered Women*, 20 Fl St. U.L. Rev. 163 (1992) 22

Victor L. Streib, *Women As Perpetrators Of Crime: Rare And Inconsistent: The Death Penalty For Women*, Fordham Urb. L.J. 609 (2006) 21

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INTRODUCTION

COMES NOW, APPELLANT, BRANDY HOLMES, through counsel, and pursuant to Rule XXVIII of the Rules of the Supreme Court of Louisiana, Article 905.9 of the Louisiana Code of Criminal Procedure, the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and Article I, sections 2, 3, 13, 16, 19, 20, 21, 22, 23, and 24 of the Louisiana Constitution of 1974, respectfully files this Sentence Review Memorandum in response to the State's *Sentence Review Memorandum* and the trial court's *Uniform Capital Sentence Report*. In respect of the latter, Appellant refers the Court to her *Defense Opposition to Factual Contents Uniform Capital Sentence Report and Capital Sentence Investigation*

Report, and incorporates it herein. Appellant also incorporates all facts, law and claims raised in her previously or subsequently filed appellate pleadings, including *Motion for Hearing to Determine Competency on Appeal*, and *Appellant's Brief*.

This Court has a constitutional obligation to review each sentence of death to determine if it is constitutionally excessive. This review, mandated by the legislature, safeguards a capital defendant's rights under the Eighth and Fourteenth Amendments to the United States Constitution and Article I, § 20 of the Louisiana Constitution.[1] *State v. Hoffman*, 98-3118 (La. 4/11/00), 768 So. 2d 542, 589. "Scrupulous appellate review is constitutionally required in death

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[1] Art I, § 20 of the Louisiana Constitution provides: "[n]o law shall subject any person to euthanasia, to torture or to cruel, *excessive*, or unusual punishment." (emphasis added). *State v. Perry* 610 So.2d 746, 750 (La. 1992). "The framers of our state constitution clearly intended for this guarantee to go beyond the scope of the Eighth Amendment in some respects." *State v. Sepulvado*, 367 So. 2d 762, 764 (La. 1979) ("The Louisiana Constitution of 1921 merely prohibited "cruel and unusual punishment." Article I, Section 12. In a deliberate change of wording, the new Louisiana Constitution of 1974 broadened the constitutional provision (and the duty of our courts in review of sentences) by providing, Article I, Section 20: "No law shall subject any person ... to cruel, Excessive, or unusual punishment." (Italics ours.) *The deliberate inclusion of a prohibition against "excessive" as well as "cruel and unusual" punishment adds an additional constitutional dimension to judicial imposition and review of sentences.* By it, the excessiveness of a sentence becomes a question of law reviewable under the appellate jurisdiction of this court. See La.Const. art. 5, Section 5(C).") (emphasis added).

cases . . . Before this court will affirm the imposition of the death penalty, all the information before us must be convincing that death would not be an excessive punishment." *State v. Smith* 400 So.2d 587, 593 (La. 1981) (citations omitted).

As part of this review, the Court must determine: "(a) whether the sentence was imposed under the influence of passion, prejudice or any other arbitrary factors, and (b) whether the evidence supports the jury's finding of a statutory aggravating circumstance, and (c) whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." La. Sup. Ct. R. XXVIII (2005).

Ms. Holmes' sentence of death is constitutionally excessive in that it was imposed under the influence of Passion, prejudice, and other arbitrary factors and it is disproportionate to the penalty imposed in other cases due to significant mitigation as well as the fact that Ms. Holmes is a woman dominated by her co-defendant Robert Coleman during the commission of the crime.

I. FACTS TO BE CONSIDERED FOR PURPOSES OF THE COURT'S EXCESSIVENESS REVIEW – THE FAILURE OF THE DISTRICT ATTORNEY AND TRIAL COURT TO PROVIDE ADEQUATE OR ACCURATE INFORMATION

An adequate capital sentence review cannot be performed without consideration of both mitigating

and aggravating circumstances. Indeed a proper consideration of all available mitigating evidence is a basic prerequisite to individualized sentencing, and a death penalty that is constitutional under the Eighth Amendment and Louisiana Constitution. As this Court holds, a death sentence is arbitrary and excessive if it is "imposed in disregard of numerous and persuasive mitigating circumstances which clearly outweigh any aggravating circumstances found to be present." *State v. Sonnier* 380 So.2d 1, 7 (La. 1979) (reversing excessive death sentence despite jury's finding of six aggravating circumstances, because of compelling nature of mitigation). *See also*, *Williams v. Maggio*, 679 F.2d 381, 388 (5th Cir. 1982) (" . . . the court must examine all possible mitigating circumstances and compare the case with all other murder cases from the affected judicial district in order to ensure that the sentence is not disproportionate").

Under Rule XXVIII, this Court established detailed procedures to facilitate its capital sentence review. In keeping with the aim of ensuring individualized sentencing, the procedures require both the trial court and the district attorney to present various categories of information relevant to the excessiveness determination; namely factors generally considered aggravating (such as the crime, the defendant's prior record and victim impact), and factors generally considered mitigating (such as family situation and background, education, mental and physical condition, drug use at the time of the offense). Due process requires that the statutorily mandated considerations

be taken into account in performing excessiveness review. The trial court is obligated to prepare and file a Uniform Capital Sentence Report (UCSR) containing pertinent details about the offense and the defendant, as well as a sentence investigation report prepared by a probation officer. The State is similarly required to submit a Sentence Review Memorandum (SRM) providing this court with a "synopsis of the facts in the record, concerning the crime and the defendant."

Both the trial court's UCSR and the state's SRM were inadequate. While providing quite detailed reviews of the circumstances of the offense and facts in aggravation, they both failed to give a "synopsis of facts in the record" of the substantial mitigating evidence in this case. The Uniform Capital Sentence Report in particular was riddled with inaccuracies and misrepresentations of the facts in the trial record, minimizing, mischaracterizing and inaccurately reporting compelling evidence of Ms. Holmes significant impairments and other mitigating evidence which was adduced in pretrial hearings and at trial, and filed into the record of this case. The court failed to provide information that was uncontroverted at trial regarding her thoroughly-documented history of brain damage, major mental illness, borderline mentally retarded intellectual functioning, physical and sexual abuse and neglect. For example, when asked at various points about defendant's mental health the trial court refers to past diagnoses of antisocial personality disorder, conduct disorder and

oppositional defiance disorder, and states that there are no other mental health considerations (Questions 14 and 16). The court failed to mention evidence of past and present diagnoses of far more severe (and more mitigating) debilitating mental disorders including PTSD, alcohol and drug dependence, chronic depression with psychotic features, as well as the numerous reports of psychotic symptoms and treatment with anti-psychotic medications which are contained in her juvenile records. The court also failed to detail the multi-faceted areas of brain dysfunction that was attested to through uncontroverted expert testimony at trial and at pre-trial hearings. Similarly the report states that there was no evidence that Defendant was under the influence of narcotics or dangerous drugs at the time of the offense; in fact the court's own expert, psychiatrist Charles Armistead M.D., concluded that Ms. Holmes was "perhaps influenced by the use of cocaine at the time" of the offense and the state's records reflect that Brandy has struggled with substance abuse issues since childhood. Appellant refers the Court to the *Defense Opposition to Factual Contents of Uniform Capital Sentence Report and Capital Sentence Investigation Report* for further details and for a more complete synopsis of facts in the record concerning the defendant, and corrections to the trial court's report.

The State's sentencing review memorandum omitted *any* reference to mitigating circumstances whatsoever.

As part of the UCSR and SRM, the trial court and State are also required to present information about the aggravating and mitigating factors in other first-degree cases from the same district and to compare them to the aggravating and mitigating circumstances in the current cases.[2] This is to aid the Court with the comparative proportionality aspect of its excessiveness review. An inference of arbitrariness arises if the imposition of a death sentence "is inconsistent with sentences imposed in similar cases in the same jurisdiction." *State v. Sonnier*, 380 So. 2d 1, 7 (La. 1979).

Yet in addressing the other cases in the district both the UCSR and the SRM, focus almost exclusively on details of the offense and aggravating aspects, with very little mention of mitigating factors in those cases, and in most cases, none at all. (Despite its significant deficiencies, the trial court's review of cases in the UCSR, is *identical* word for word, to the

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[2] In completing its review the trial court is instructed to "compare the sentence of this defendant in the aggravating and/or mitigating factors to the sentences of other convicted offenders with similar aggravating and/or mitigating factors of which you have knowledge". Rules of the Louisiana Supreme Court, Appendix B, Uniform Capital Sentence Report. Rule XXVIII sec. 4(b) provides that the state's Sentence Review Memorandum shall include "a list of each first degree murder case in the district in which sentence was imposed after January 1, 1976. . . . " The list shall include "a synopsis of the facts in the record concerning the crime *and the defendant*" and "a synopsis of the facts in the record concerning the crime *and the defendant* in the instant case." *Ibid.* (emphasis added).

relevant section of the State's Sentence Review Memorandum, filed 15 days earlier). In the discursive section of its report the trial court does not "compare the sentence of this defendant in the aggravating and/or *mitigating* factors to the sentences of other convicted offenders with similar aggravating and/or *mitigating* factors of which you have knowledge". Rules of Supreme Court of Louisiana, Appendix B. Uniform Capital Sentence Report, D.7 (emphasis added). Rather, the court *again* simply recites the facts relevant to the crime, with no mention of the extensive mitigation in Ms. Holmes case, nor of the impact that such mitigating evidence played in other cases.

The Court's UCSR and State's SRM therefore fail to perform the statutorily prescribed functions that are supposed to assist this Court in determining the constitutionality of Ms. Holmes death sentence. The data provided is insufficient, flawed and often incorrect. Consequently the ultimate conclusions reached by the trial court are of limited value. Appellant urges the court to perform its own thorough review of the record, and the facts of other similar cases, *de novo*. Due process requires it.

II. THE DEATH SENTENCE IN THIS CASE IS CONSTITUTIONALLY EXCESSIVE BECAUSE IT WAS IMPOSED IN THE FACE OF OVERWHELMING MITIGATING EVIDENCE

The mitigating evidence in this case is overwhelming. Ms. Holmes' death sentence flies in the

face of the most fundamental principles of our criminal justice system; that only the most culpable defendants who commit the most heinous crimes should receive the ultimate punishment, and that those with limited capacity to understand and control their actions, should not.

Brandy Holmes suffers from a myriad of severe mental and cognitive impairments including severe mental illnesses, organic brain damage, significant brain dysfunction in several areas, learning disabilities, alcohol and drug dependence, and borderline mentally retarded intellectual functioning. She was abused and neglected during childhood. She was raised by an alcoholic mother in an instable environment characterized by poverty, instability and violence. She ran away from home many times. Serious questions remain about the level of her involvement and culpability concerning the offense, and in particular, the greater culpability of her co-defendant Robert Coleman, who abused and controlled her, and the reliability of her numerous, contradictory "confessions" which are the *only* evidence that Ms. Holmes was present during the crime.

Brain Damage and Brain Dysfunction

The uncontroverted evidence adduced from mental health experts both in pretrial hearings and at trial demonstrates that Brandy Holmes was born with brain damage and Fetal Alcohol Syndrome, to an alcoholic mother, who drank throughout the

pregnancy. R. 4152-53, 6143-47. Testimony of Richard Williams, M.D. ("Williams"); R. 6199, Testimony of James Clifton Patterson, II, M.D., Ph.D. ("Patterson").[3] Neuropsychological testing found moderate organic brain dysfunction primarily to the left side of her brain. R. 4199, 6120, Testimony of Mark Vigen PhD ("Vigen"); R. 4156, 4172, 6138, Testimony of Williams. The specific impairments to Brandy's brain negatively impact her ability to: reason, foresee consequences, communicate, abstract and learn from experiences, control impulses, read verbal cues, and accurately interpret the reactions of others. R. 4199, Testimony of Vigen; R. 4161-62, 6161, Testimony of Williams. Subsequent neuro-imaging of Brandy's brain with Magnetic Resonance Imaging (MRI) and Positron Emission Tomographic (PET Scan) revealed visible damage to Brandy's brain considered to be "very significant, highly significant," by the psychiatrist and expert in functional neuron-imaging who testified at trial. R. 6199, Testimony of Patterson. The MRI and PET Scan revealed significant abnormalities in several areas of Brandy's brain, including: the amygdala, bilateral inferior temporal regions, superior temporal areas along the sylvian fissure, bilateral parietal regions, left medial temporal area, right putamen/globus pallidus, bilateral cerebellum frontal

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[3] "R. ___" refers to the record on appeal lodged with this Court.

regions. R. 3682, Report of Patterson. These findings were not contested by the prosecution.[4]

Learning disabilities and borderline retarded intellectual functioning

The life long nature of Ms. Holmes' substantial deficits are evidenced in her school records, and corroborated by educational testing prior to trial. She has a long history of profound learning disabilities. The Caddo Parish school system identified her as a child in need of special help at the age of six. She was classified as learning disabled and speech impaired; her difficulties included particular problems in reading, math, and communication, and difficulty with "visual and auditory processing and visual-motor integration". R. 674-695. She repeated the first and third grades and was socially promoted in special education through the 5th grade, at which point she entered the juvenile justice system and no longer attended a school set up by grade levels. R. 4122, 4184. Assessments at age ten years six months,

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[4] Unfortunately, the jury never heard testimony regarding the significant behavioral effects of the brain damage uncovered in neuro-imaging. The affected regions implicate several critical areas of functioning, including memory, emotion, attention, visual and auditory language processing, sensory processing, social-emotional relations, visual-spatial relations, personal identity, and temporal-sequential motor activity. Damage to these areas can result in a wide variety of impairments from memory loss and cognitive disabilities to problems with motor control, thought disorder and psychosis. http://brainmind.com.

showed that despite good attendance she was making "slow progress," she functioned at a 1st grade level for reading and spelling, and low 2nd grade level for math. She exhibited behavioral problems and had difficulty with peer relationships. She was involved in fights because other children called her a special education "nerd." R. 674-695. A psychiatrist described 12 year-old Brandy as "very regressive and not quite fitting in with the rest of the kids because of her low IQ."[5] In 1993 a progress report by the Office of Youth and Development stated she was "within the upper limits of the mentally retarded range." R. 2348, CD of Juvenile Records at 61.

Educational testing before trial revealed that at the age of 26, Ms. Holmes' academic skills in the areas of reading, math, broad knowledge, verbal comprehension, and visual auditory learning spanned an age-equivalent range of 6 years, 3 months to 11 years, 8 months. R. 4180. Overall Dr. Vigen's testing indicated that Ms. Holmes was functioning in the 4th-7th grade level in terms of academics and intellectual functioning. R. 4179. Dr. Williams testified pre-trial that Ms. Holmes functions like a 10-12 year-old. R. 4163.

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[5] In response to the same psychiatrist's question regarding what she would wish if she had three wishes, Brandy responded that "she would like for all children to have what they wanted and that nothing will hurt them and everybody should be rich." R. 2348, CD of Juvenile Records at 1235-1236.

Every doctor that evaluated Ms. Holmes placed her intellectual functioning at the borderline mentally retarded range. Drs. Vigen and Williams testified pre-trial that in addition to a full scale IQ in the 74-77 range, placing her in the bottom 6% of the population in terms of intellectual functioning, Ms. Holmes' adaptive functioning is extremely limited in 5 areas: social skills, self-direction, health and safety, functional academics, and work. R. 4194, 4169-70. Both court appointed experts found her to be of borderline intelligence. Dr. Seiden estimated her I.Q. at 75. R. 2350, R. 2356.

Mental illness

The record is replete with evidence that Ms Holmes is severely mentally ill. She first received psychiatric treatment at the age of 12 when she was committed to a psychiatric hospital in Mississippi.[6] At

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[6] Brandy had refused to eat for two days in an attempt to starve herself to death. She was committed to a psychiatric hospital in Mississippi. R. 2348, CD of Juvenile Records at 1235-40. At the hospital, Brandy said that she had been raped by an older boy. Unbelievably, Brandy's allegation of rape at age 12 by her sister's 16 year-old boyfriend was characterized at the trial of her case, through questioning by the assistant district attorney, as "consensual." R. 6101. At the time of this allegedly "consensual sex" on the part of a child not yet old enough to consent to sex, Brandy was described by a psychiatrist as "very regressive and not quite fitting in with the rest of the kids because of her low IQ." R. 2348, CD of Juvenile Records at 1239. Brandy clearly functioned at a much younger level of maturity than an average 12 year-old. In response to the same

(Continued on following page)

that time she was diagnosed with Post Traumatic Stress Disorder and Major Depression, diagnoses that were consistent from 1992 through a pretrial court-ordered expert evaluation performed in 2005 by George Seiden M.D. R. 6125, Vigen Testimony; R. 2363, Seiden Competency Evaluation.

As a child and adolescent, she was also diagnosed with conduct disorder and oppositional defiant disorder – childhood disorders. As she moved into adulthood she was diagnosed with Borderline Personality Disorder and Antisocial Personality Disorder.. Both pretrial and at trial, experts who were aware of Brandy's significant brain dysfunction attributed her antisocial behavior to her impaired brain functioning. R. 6120-21, Testimony of Vigen; R. 4161-63, 6161-62, Testimony of Williams.

Over the years, mental health experts have diagnosed Brandy with psychotic disorders and symptoms, including Major Depression with Psychotic Features. R. 4188, 6109-11, 6125-26, Testimony of Vigen. Records show a variety of symptoms including hallucinations, delusions, mania, self-harming, and bizarre behavior. R. 2384, CD of Juvenile Records, at 2849-2856.

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psychiatrist's question regarding what she would wish if she had three wishes, Brandy responded that "she would like for all children to have what they wanted and that nothing will hurt them and everybody should be rich." R. 2348, CD of Juvenile Records at 1235-1236.

Brandy Holmes was prescribed anti-psychotic medications in her adolescence (ages 15-19), such as Thorazine, Haldol, and Stelazine. R. 2384, CD of Juvenile Records.[7] As she moved into adulthood (19 until time of trial), she was prescribed anti-depressants such as Zoloft. R. 2384, CD of Juvenile Records;[8] R. 6163, Testimony of Williams. Court appointed expert Charles Armistead M.D. noted her "apparent history of psychotic disorder." R. 2355.

Childhood Abuse and Neglect

Brandy Holmes' problems were exacerbated by the neglect and abuse she suffered at her parents' homes, and a lack of appropriate treatment. She was born into poverty to an alcoholic mother who was unable to her child's needs. R. 4152-53, 4161, Testimony of Williams. Her parents separated when she was a baby. She spent time in both her parents' family environments; both were characterized by alcoholism, violence, and a failure to provide structure, safety and security to a severely impaired young girl. R. 4161, 6161, Testimony of Williams; R. 4200, Testimony of Mark P. Vigen, Ph.D. (hereinafter Vigen). A 1992 psychological evaluation of twelve year old Brandy found "evidence that Brandy has likely

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[7] Juvenile Records at 118, 149, 151, 257, 295, 337, 572, 645, 699, 701, 711, 713, 715, 717, 992-93, 1897, 2501, 2521, 2525, 2537, 2771, 2776, 2777, 2779, 2827, 2829.

[8] Juvenile Records at 1895, 1911, 2057, 2060, 2063, 2066, 2067, 2509.

suffered chronic rejection, abuse, or has been involved in a dysfunctional or chaotic family situation", that she "has likely been exposed to conflict, violence and hostility" and that she is "lonely, isolated and depressed." R. 2348, CD of Juvenile Records at 76. In 1994 a psychiatrist noted Brandy's early history of pica (eating non nutritive substances such as rocks), which is "indicative of disorders of parent-child nurturance and psychological deprivation in certain instances, and "which can also lead to any number of medical complications, including lead poisoning and neurological and behavioral disturbances" R. 2348, CD of Juvenile Records at 1251-001257.

Throughout her adolescence, Brandy alleged that she was sexually abused as a young girl by her father and other adults in her father's home, and gang raped at the age of 14. The allegations were never fully investigated or taken seriously at the time. R. 4161, 4166-67.[9] In 1993 an Office of Juvenile Services Custody Screening reported noted that she "is or has been the victim of sexual abuse." R. 2348, CD of

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[9] Records reflect that contemporaneous investigation into one particular rape incident confirmed that a boy several years older than 12-year old Brandy had sexual intercourse with her, but characterized the incident as "consensual". At trial the State denied this was rape (R. 6234) despite the clear law in Louisiana (and in Mississippi where the offense occurred) that such incident is *statutory rape*. No other evidence of sexual abuse was presented to the jury and the state did not attempt to refute any of the other sex abuse allegations evidenced in her juvenile records.

Juvenile Records at 23. In 1994 a psychiatrist at the Shreveport Mental Health Center recommended her for group therapy for sexual abuse survivors, but there is no evidence that this treatment was provided. R. 2348, CD of Juvenile Records at 648.

Despite Brandy's low functioning and behavioral problems, she never received testing which would have identified her significant brain damage and allowed for the development of appropriate interventions both at home and at school. Instead, Brandy was shipped back and forth between her parents' homes in Mississippi and Louisiana, when they could no longer tolerate Brandy's behavior. As she entered adolescence, Brandy's multiple problems manifested in increasingly destructive behaviors which included truancy, running away from home and group homes, suicide threats and efforts to physically harm herself, destruction of property, theft, and unauthorized entry of an inhabited dwelling. Following Brandy's commitment to a psychiatric hospital at age 12, it was recommended that she be placed in a group home where she would be adequately supervised and receive treatment she sorely needed. Despite this she returned to her father's home. R. 4186, 6123, Testimony of Vigen; R. 4161, 4164, 6161, Testimony of Williams. R. 2348, CD of Juvenile Records at 10-13.

At the age of 13, dependency proceedings were instituted because Brandy's mother was unable to respond to Brandy's needs. Simultaneously Brandy was found delinquent for possession of a concealed weapon, after she carried knives to school for

self-protection. She was removed from her mother's home and entered the juvenile system. After failed placements in group homes who were unable to control her, she was sent to LTI.[10] During her brief release into her mother's care in 1994, 14-year-old Brandy became pregnant and had an abortion. R. 2348, CD of Juvenile Records at 1251-1257. Within a couple of months she was back in the juvenile system, for burglary. She was sentenced to juvenile life. The juvenile judge, who had followed her case over the years, recommended that she be placed into long-term in-patient psychiatric care. Due to administrative red-tape, and despite the intervention of the chief juvenile judge who ordered her placement in a psychiatric facility, this did not occur.[11] Instead she was placed in Louisiana's punitive juvenile detention facilities where she remained for the rest of her

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[10] An evaluator at LTI in Monroe who assessed Brandy in 1993 at the age of 14 concluded that Brandy may have been caught up in the juvenile system for acting-out behavior which would be far more appropriately addressed in a halfway house or juvenile residential treatment home. R. 2348, CD of Juvenile Records at 336.

[11] When Brandy was sent to LTI, the Chief Judge of the Juvenile Court intervened and ordered her long term placement and treatment in a psychiatric facility, and stated he wanted Brandy out of detention immediately. However because of an administrative hitch she never received the vital treatment she needed. A DPSC Memorandum records that "Brandy Holmes's treatment needs are trapped between two state agencies and new federal guidelines," a difficulty that was never overcome. R. 2348, CD of Juvenile Records at 648.

childhood.[12] There, Brandy was charged on multiple occasions with battery and was ultimately sentenced as an adult to two years at the Louisiana Correctional Institute for Women. Second SIR at 6-8.

Questions concerning competence

Questions remain as to Ms. Holmes' competence. While two pre-trial court-ordered sanity evaluations found that Brandy was competent to stand trial, the psychologist and psychiatrist who knew of Brandy's brain damage and dysfunction both questioned her competence to assist counsel in her defense given her severe limitations. Dr. Vigen testified pretrial that Brandy's ability to give meaningful assistance to her trial attorneys was compromised. "We're talking about things [Brandy] may know something about, then be able to help both of you [defense attorneys] and inform you. All that is a complex process. She's going to have limitations doing that." (R. 4200-4201,

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[12] Brandy was incarcerated at the Monroe and Jetson juvenile prisons during a period of time when the U.S. Department of Justice found "serious, systemic, and, in certain cases, life-threatening, harm being inflicted on the juveniles in all four facilities. . . . The violence at the facilities is so pervasive that our consultant concluded that 'the greatest responsibility for the problems seen must be directed to the institutes' administrators and senior staff. It is clear that these men and women either knew or intentionally sought not to know of the serious violence to children that was occurring [at the facilities].'" U.S. Department of Justice Findings Letter, Addressed to Governor Foster, dated June 18, 1997.

Vigen). Dr. Williams agreed, testifying that Brandy would have difficulty assisting counsel in her defense.

Dr. Williams also questioned Brandy's fundamental ability, given her brain dysfunction, to assimilate the difference between right and wrong and act accordingly. He testified pretrial that while Brandy can articulate the difference between right and wrong "she doesn't integrate that very well. . . . She never assimilates that even though she can articulate the difference." (R. 4171, Williams).

Questions concerning Brandy's role in the crime

The neuropsychological testing and neuroimaging findings of brain damage and dysfunction, as well as Brandy's borderline intellectual functioning, history of abuse and neglect, and immaturity, all raise significant doubt regarding her guilt, and certainly her degree of participation and culpability.

Brandy and her boyfriend at the time, Robert Coleman, were both charged with capital murder in this case. Coleman was older not only in chronological years (Brandy was 23, Coleman was 33), but was light years ahead in terms of maturity (Brandy functioned at an age-equivalent of 9-13). The psychiatrist who examined Brandy and interviewed family members testified pretrial, again in uncontroverted testimony, that Brandy did whatever her boyfriend Coleman told her to do. She was physically abused by him and controlled by him. At times she

had tried to leave him and he had threatened her, so she stayed. R. 4164-65, Williams.[13] Even the Assistant District Attorney who prosecuted this capital case expressed concern as to the level of Brandy's involvement in the murder for which she has been convicted and sentenced to death:

> Assistant Caddo Parish District Attorney Hugo Holland was interviewed concerning this report. It is his opinion that Robert Coleman may have played a more significant role in the instant offense than Brandy Holmes related to detectives. Certain forensic evidence at the scene leads Mr. Holland to believe that Robert Coleman could have been the murderer of Mr. Brandon and possibly could have shot him upon first entering the residence. Mr. Holland maintains that, because of several conflicting stories given by Holmes to interviewers, it probably will never be known who did exactly what in the Brandons' residence on the date of the murder and attempted murder. According to Mr. Holland, one thing is certain; there was enough forensic evidence found at the crime scene to indicate that at least two persons committed the offenses. Mr. Holland related

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[13] Throughout her juvenile records are references to the fact that Brandy was easily influenced and persuaded by peers, as well as recommendations that she stop allowing peers to influence and improve her ability to make her own decisions. R. 2348, CD of Juvenile Records at 8, 24, 295, 314, 318, 325, 421, 652, 3203.

> that he believes Holmes' personality is one that would exhibit tendencies to cover for and/or make excuses for an individual that she cared for, namely Robert Coleman. While speaking with a female detective in one interview, Holmes asked the detective if she had ever loved someone so much that she would do anything in the world for him. The detective then asked if the subject was referring to Robert Coleman, and Holmes replied that she was.

First SIR, at 5-6 (Defense Opposition To Factual Contents Of Uniform Capital Sentence Report and Capital Sentence Investigation Report, Ex. A.)[14]

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[14] It became clear from correspondence attached to the SIR (submitted to the Court on May 30, 2006) that a previous report had been furnished to this Court. Ms. Holmes sought production of the earlier versions of the SIR. Pursuant to this Court's March 5, 2007 order, Ms. Holmes received a copy of the first SIR (submitted to the Court prior to April 21, 2006). Based upon other information provided with the first SIR (this Court's explanation and the affidavit of the Probation and Parole Officer who completed both SIRs), it is Ms. Holmes' understanding that the first SIR submitted to this Court was also provided to the District Attorney's Office and was revised and resubmitted to the Court based upon written information provided to the Probation and Parole Officer by the District Attorney's Office. Defense counsel was not provided with a copy of the first SIR at the time it was completed, nor was defense counsel provided with the opportunity to revise it. The initial SIR (provided to the Court prior to April 21, 2006) will be referred to herein as "first SIR" and the second SIR (provided to the Court on May 30, 2006) will be referred to herein as "second SIR."

According to the state's experts at trial, the blood evidence shows that Robert Coleman was standing in close proximity to Mr. Brandon when he was shot and killed, consistent with Coleman being the shooter or holding the victim at the time he was shot. R.5755. As Ms. Holmes prosecutors argued to Robert Coleman's jury, "That puts those boots [Coleman's] on the killer shoving that gun up under his chin and pulling the trigger . . . About as far away as you are going to get from that is in a very small radius standing next to him." Coleman Record at 4714.[15] In Robert Coleman's trial the state presented evidence that Coleman himself confessed to being the shooter.[16]

While it is undisputed that Ms. Holmes had some knowledge about the homicide, the *only* evidence that Ms. Holmes was present at the scene during the crime, was her statements to police. Her mental impairments, as well as Coleman's ability to control and manipulate her, add to doubts about their reliability. Brandy gave multiple contradictory statements "confessing" to various degrees of involvement in the homicide; four of which were recorded, and several of which were not. Despite physical evidence that

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[15] "Coleman Record ___" refers to the record on appeal lodged with this Court in *State v. Coleman*, 2006-0518.

[16] At Robert Coleman's trial the state presented evidence of Coleman's confession to two cell mates, including testimony by Bobby Evans that Coleman admitted to shooting Julian Brandon. Coleman Record R. 4392, 4460, 4513. It is undisputed that Mr. Brandon was shot just one time.

Coleman was closely involved in the homicide, Brandy never implicates him; in fact in only one version of the crime does she place him at the scene at all. Her statements are littered with inconsistencies, both internally and as between statements, and contain numerous inaccuracies. The trial court excluded Holmes' statements from evidence at Robert Coleman's trial, in part because they were so contradictory and unreliable.[17] Coleman's ability to manipulate Brandy continued after they were arrested; he manipulated her into signing an affidavit exculpating him entirely from the incident, suggesting to her that it was in her best interests and that he would get her out of jail when he was released.[18] He also tried, unsuccessfully, to persuade her to plead guilty, telling her he'd get her plea changed when he was out. R.2030, 2099.

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[17] Sustaining the state's hearsay objection to their admissibility the trial court ruled: "the hearsay statements of Brandy Holmes will not be admitted. There are lots of them. They all go in different directions." R. 4937. At Coleman's oral argument the state confirmed its recollection that this was a key part of the court's rational for excluding one of Holmes's statements, from admission at Coleman's trial; Hall represented that the court excluded Ms. Holmes' statement because she gave so many different stories and they bore "no indicia of reliability".

[18] This affidavit was one of the documents the judge excluded from evidence at Coleman's trial. Coleman Record 4937-4939.

There are similar uncertainties about the degree of Ms. Holmes participation in the Blaze homicide. Again, the only person linked by physical evidence to the Blaze homicide is Robert Coleman, who, based on blood evidence state experts concluded was sitting next to Blaze in the car when he was killed. R.6035.[19]

The mitigating evidence in this case is overwhelming; Ms. Holmes' death sentence was imposed "in disregard of numerous and persuasive mitigating circumstances which clearly outweigh any aggravating circumstances found to be present". *State v. Sonnier*, 380 So. 2d 1, 8 (La. 1979). Her sentenced should be reversed.

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[19] Coleman had motive for killing Blaze. There is evidence that Coleman was jealous, and violently possessive of Brandy Holmes, R.1429-1430, 1297-1301, and that he may have believed that Holmes had a sexual relationship with Terrance Blaze when she was released from jail in 2002 and was pregnant with Blaze's child. R.1429-1430, 1356, 1375. Elsewhere in the record evidence suggests that Blaze was afraid of a black man who was after him because of a girl; Blaze's girlfriend, Lavisha Edwards, told the police that that the day before the homicide Blaze left her at the bus terminal because he was concerned about being mugged or getting into an altercation with "this dude down there who was gonna start up messing with him behind a girl", a black guy. R. 1605-1606. This information was not presented to the jury, but was included in reports filed into the record by the state in discovery pre-trial.

III. THE EXECUTION OF PERSONS WITH FETAL ALCOHOL SYNDROME VIOLATES THE FEDERAL CONSTITUTIONAL PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT AND VIOLATES LOUISIANA'S BROADER PROHIBITION AGAINST CRUEL, EXCESSIVE OR UNUSUAL PUNISHMENT.

In *Atkins v. Virginia,* 536 U.S. 304 (2002), significant deficiencies such as those demonstrated in the record Ms. Holmes' case and attributable to Fetal Alcohol Syndrome (FAS) "do not warrant an exemption from criminal sanctions, but diminish [a defendant's] personal culpability." *Id.* at 320. The *Atkins* Court recognized longstanding jurisprudence that the death penalty is reserved for those most deserving of the most extreme and final punishment. *Id.* at 319 (citing *Godfrey v. Georgia,* 446 U.S. 420, 433 (1980) (reversing death sentence because crimes did not reflect "a consciousness materially more 'depraved' than that of any person guilty of murder"). The Court observed that there are certain characteristics of mental retardation, specifically "diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others," which "undermine the strength of the procedural protections that our capital jurisprudence steadfastly guards." *Id.* at 317-18. Ms. Holmes demonstrated at the pretrial hearing in her case that

because she suffers from FAS, she possesses all those characteristics.

Due to FAS, Ms. Holmes exhibits the diminished capacity and culpability of a mentally retarded person. Dr. Vigen found her to have "deficiencies in processing information . . . deficiencies and limitations." R. 4197-98. Dr. Williams agreed. R. 4171. Dr. Vigen also found, through neuro-psychological testing, that Ms. Holmes has significant limitations in her ability to communicate. R. 4182, 4198. Dr. Williams concurred. R. 4171.

Likewise, due to FAS, Ms. Holmes has diminished capacities to abstract from her mistakes and engage in logical reasoning:

> She has difficulty with abstraction. I would describe her as a single focused, concrete type thinker. We gave her a test called the category test which is a very good measure of abstract thinking or fluid intelligence. And by that I mean presenting her with a visual problem, asking her to develop a hypothesis about what's wrong, then seeing whether she can test the hypothesis tasks to get the right answer by being told that this is correct or this is incorrect. So she's not able to generate hypotheses, test the hypotheses, learn from the errors or the accurate responses, and then go on to respond accurately until the problem changes where she has to do it again. She lacks the ability to think on an abstract problem, abstract solving is poor.

R. 4183. In other words, Dr. Vigen concluded: "from a cognitive perspective, she has limitation in terms of reasoning; drawing one conclusion from the other, seeing cause and affect [sic] relationships, and coming to reasonable conclusions sequentially. She does not do well." R. 4199. As a result, "[she] doesn't look at the results of her behavior of [sic] her actions and learn from them." *Ibid.* Dr Williams agreed:

> She has difficulty generalizing what's happened due to her behavior so she doesn't change her behavior. Her perceptions don't change with new information. She keeps doing the same thing over and over and over.

R. 4162.

Ms. Holmes also doesn't think before she acts: she does not have the capacity to control her impulses: "I think she lives in the moment or what's going on. She doesn't evaluate her behavior or the basis for it or the motive. It's just kind of based on what she feels at the time." Dr. Williams explained, "I think that's frontal lobe damage; I think executive function." R. 4162. Dr. Vigen agreed that Ms. Holmes "[a]bsolutely" has limitations in her control of impulses." R. 4198. Finally, both doctors opined that Ms. Holmes is impaired in her ability to understand the reactions of others. "She has a failure to notice how others respond to her." R. 4161. Dr. Vigen explained, "[s]he misperceives. . . . [I]t's difficult for her to read other people or look to other people and really understand their reactions." R. 4198-99.

In addition to Ms. Holmes' multiple impairments, both doctors testified to characteristics resulting from FAS that might make her more susceptible to a sentence of death despite the safeguards of capital jurisprudence. Dr. Vigen testified that Ms. Holmes' would "be less able than people without these deficiencies to give meaningful assistance to her attorneys." R. 4201. She would also make a poor witness because she is impulsive and emotionally reactive; she doesn't speak well, understand the import of questions, nor does she "present as someone who takes this seriously." R. 4201-02. Dr. Vigen also expressed his opinion regarding Ms. Holmes' demeanor, and how it could be misunderstood by the jury:

> Q: Could her demeanor create unwarranted impression of lack of remorse?
>
> A: Yes.
>
> Q: Please explain.
>
> A: Well, some people might not understand her facial characteristics. They may think there is something wrong with her just by looking at her. Other people might determine there is something demonic or evil about her. Her demeanor is different and distant and almost like disconnected.

R. 4202. Dr. Williams concurred on all three counts. He testified that Ms. Holmes would "have difficulty assisting counsel" and would make a poor witness

due to the fact that she is impulsive, reactionary, and "gets into story telling and becomes enamored with the attention that she's getting instead of what she's saying." R. 4173. Her demeanor would give a jury the unwarranted impression of lack of remorse because Ms. Holmes lacks empathy and has difficulty controlling her emotions. R. 4173.

Ms. Holmes' significant impairments, attributable to FAS, render her death sentence cruel and unusual punishment. As the Court explained in *Atkins,* there are only two social purposes that justify the imposition of death: retribution and deterrence. A punishment violates the Eighth Amendment when it serves no legitimate societal purpose: "Unless the imposition of the death penalty . . . 'measurably contributes to one or both of these goals [of retribution and deterrence], it is nothing more than the purposeless and needless imposition of pain and suffering,' and hence an unconstitutional punishment." *Atkins* at 319 (quoting *Enmond v. Florida*, 458 U.S. 782, 798 (1982)). Looking to the characteristic disabilities of persons with mental retardation, the Court concluded that "the lesser culpability of the mentally retarded offender surely does not merit [death as] retribution." *Ibid.* It likewise found that the purpose of deterrence would not be served by executing the mentally retarded given that their very limitations preclude thoughtful behavior in response to the law that those guilty of the most depraved murders will be sentenced to death. *Id.* at 319-20. Due to FAS, Ms. Holmes falls clearly into the

category of persons for whom the goals of retribution and deterrence serve no legitimate societal purpose.

The Supreme Court pointed out in *Atkins* that the exemption of the mentally retarded from execution served other legitimate ends of the criminal justice system, including due process and the enhanced reliability necessary in capital sentencing proceedings:

> Mentally retarded defendants may be less able to give meaningful assistance to their counsel and are typically poor witnesses, and their demeanor may create an unwarranted impression of lack of remorse for their crimes. As Penry demonstrated, moreover, reliance on mental retardation as a mitigating factor can be a two-edged sword that may enhance the likelihood that the aggravating factor of future dangerousness will be found by the jury. Mentally retarded defendants in the aggregate face a special risk of wrongful execution.

Id. at 320-21 (citing *Penry v. Lynaugh,* 492 U.S. 302, 323-25 (1989)) (internal citations omitted). Both experts testified to limitations in Ms. Holmes' ability to give meaningful assistance to counsel, to testify, and the risk that her demeanor would be erroneously used against her, giving the impression of lack of remorse.

Specifically a propos to this Court's review of death sentences for excessiveness, Article I, § 20 provides even greater protection against cruel and

unusual punishment than does the Eighth Amendment to the United States Constitution.

> In Art., I § 20 of the Louisiana Constitution of 1974, the people provided that "no law shall subject any person to euthanasia, to torture or to cruel, excessive, or unusual punishment." (emphasis added.) The framers of our state constitution clearly intended for this guarantee to go beyond the scope of the Eighth Amendment in some respects and to provide at least the same level of protection as the Bill of Rights and the Fourteenth Amendment in all others.

State v. Perry, 610 So.2d 746, 750 (La. 1992) (citing *State v. Sepulvado,* 367 So.2d 762 (La. 1979)). Specifically, the addition of the word "excessive" to Article I, § 20 adds an *explicit* requirement of proportionality that is only *implicit* in the Eighth Amendment:

> The deliberate inclusion of a prohibition against "excessive" as well as "cruel and unusual" punishment adds an additional constitutional dimension to judicial imposition and review of sentences. By it, the excessiveness of a sentence becomes a question of law reviewable under the appellate jurisdiction of this court. . . . The appellate enforcement of the constitutionally intended prohibition of excessiveness of punishment disproportionate to the offense must therefore be something more than the passing on the constitutionality of a statute penalty in a vacuum devoid of content concerning the circumstances of the crime and of the offender.

Sepulvado, 367 So.2d at 764, 767. *See also, State v. Wilson*, 2001-2815 (La. 11/22/02); 836 So.2d 2, 4 (imposition of sentence, even if within the statutory limit, may violate a defendant's constitutional right against excessive punishment). This Court cannot merely abdicate consideration of the circumstances of the offense and the offender to the jury; it must also consider *de novo* and based on the record before it whether the sentence is excessive.

Ms. Holmes' sentence of death is clearly excessive. That she suffers from FAS, with impairments identical to those described in persons with mental retardation, renders her sentence of death excessive *and* cruel and unusual, and therefore unconstitutional. This Court should vacate the sentence of death and remand her case to the trial court to impose a life sentence.

IV. THE SENTENCE OF DEATH IS EXCESSIVE BECAUSE THE JURY IN MS. HOLMES CASE, ENCOURAGED BY THE PROSECUTION, FAILED TO GIVE MITIGATING EFFECT TO SUBSTANTIAL MITIGATING EVIDENCE.[20]

The United States Supreme Court has repeatedly recognized the very real danger that jurors may be

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[20] The prosecution's erroneous representation of the law in both voir dire and closing argument to the jury also violated Ms. Holmes' right to due process under the state and federal constitutions.

confused by evidence presented in mitigation of a capital crime and erroneously consider it as aggravating evidence. *Penry v. Lynaugh*, 492 U.S. 302 (1989); *Atkins v. Virginia*, 536 U.S. 304 (2002). The combination of 1) the court's failure to instruct jurors that Fetal Alcohol Syndrome (FAS) should be given mitigating effect, and 2) the prosecution's repeated argument that giving mitigating effect to evidence of FAS would in fact *contaminate* the jury's decision with the forbidden passion and prejudice resulted in the jury disregarding the substantial mitigation presented by the defense. The jury's failure to be instructed upon and to consider mitigating evidence resulted in an unconstitutionally excessive sentence of death which this Court should reverse.

In *Penry*, the United States Supreme Court found that without an instruction to jurors indicating that the defendant's mental retardation should be given mitigating effect, the jury may well have improperly considered it as supporting a sentence of death. Because the Texas jury was required to answer three questions, special issues, in determining the appropriate punishment, life or death, but was never told to consider mental retardation as a mitigating circumstance which diminished moral culpability, the sentence of death violated the Eighth Amendment.

> Penry argues that his mitigating evidence of mental retardation and childhood abuse has relevance to his moral culpability beyond the scope of the special issues, and that the jury was unable to express its "reasoned moral

> response" to that evidence in determining whether death was the appropriate punishent. We agree.

Id. at 322. As a result, Penry's sentence of death was set aside.

The decision was premised upon fundamental Eighth and Fourteenth Amendment jurisprudence inundating that a jury

> not be precluded from considering, *as a mitigating factor,* any aspect of a defendant's character or record and any of the circumtances of the offense that the defendant proffers as a basis for a sentence less than death.

Lockett v. Ohio, 438 U.S. 586, 604 (1978) (emphasis in the original). It is a "belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." *California v. Brown,* 479 U.S. 538, 545 (1987) (O'Connor, J., concurring). Moreover, "it is not enough simply to allow the defendant to present mitigating evidence to the sentencer. The sentencer must also be able to consider and give effect to that evidence in imposing sentence." *Penry,* 492 U.S. at 318. When the defendant is not allowed to present the evidence, or the sentencer is able to give it something other than mitigating effect, the sentence does not meet the constitutional requirement that is be individualized

and relaiable. *Ibid*; *see also Atkins,* 536 U.S. at 320-21.

In Ms. Holmes' case, the prosecutor relentlessly argued that the jury *should not* consider evidence of a difficult childhood and of FAS in determining whether Ms. Holmes should be sentenced to life or death.

> "Defense is asking you to take a heinous act, a horrible act that has inflicted all this suffering on people and make it something less. Say, well, it's not as bad. Remember, that's what mitigating means. It's not as bad that Brandy did these things because of FAS. . . . To ask you to *somehow discount the severity of her actions on that basis I think defies reason. It defies the entire purpose for which we have the ultimate penalty which is that it is proportional,* that it is just in certain cases, and to say that this case doesn't deserve the death penalty because of these little things."

R. 6217. As the prosecutor later amplified, "what you've seen is a play on your sympathy, upon your passion, on any prejudices you may harbor. But you know from instructions it's improper." R. 6231. *See also* R. 6211 (can't call FAS mitigating); 6212 (saying Brandy's mother drank or that Brandy had FAS "doesn't mitigate anything"); 6218 (implying mitigation must rise to level of insanity); R. 6219 (anything short of an inability to choose – insanity – doesn't constitute mitigation). The prosecutor's argument dismantles the past 30 years of capital

jurisprudence by saying it is actually improper, illegal, to consider Ms. Holmes' moral culpability by giving mitigating effect to her background and mental impairments.

In conjunction with its erroneous arguments to the jurors instructing them to disregard FAS because it would contaminate their sentencing decision with passion and prejudice, the prosecution also repeatedly pointed to aspects of Ms. Holmes' FAS that it argued illustrated *bad* character and propensities and should therefore be considered in support of guilt as well as a sentence of death. At the guilt phase the prosecution shamelessly capitalized upon Ms. Holmes' demeanor and actions, all due to her significant limitations, to argue that she was a cold, calculating killer who ridiculed and laughed at the plight of the victims of the homicides. In the guilt phase closing, the state argued that her speech tone minimized the seriousness of the Brandon crime when she said to her nephews "let's go see" in the same tone she would say "let's go get ice cream." R. 5786. The state argued, from Ms. Holmes' statements, that what a person is "covering up is usually worse than what they admit to." R. 5793. And finally, it argued that based on Ms. Holmes' expressions in her statements, she had contempt for life. R. 5811. In sentencing the prosecution argued that the jury should give no thought whatsoever to reduced culpability based on debilitating impairments, that it should disregard its duty to exercise discretion guided by statutory mitigating circumstances, and instead

return a sentence of death based purely upon the horrible facts of the crime. It was the manifestation of Ms. Holmes' very impairments that the prosecutor capitalized on in doing so. R. 6217 (quoted *supra*).

The court's instructions to the jury regarding their consideration of mitigating circumstances in no way instructed them that FAS should be given mitigating effect. The court merely read the list of statutory mitigating circumstances and instructed jurors they could consider anything else they wanted as mitigation. R.6244. At the same time, the court instructed jurors that it must consider the character and propensities of the victim giving only one example of character and propensity – the commission of another homicide. R. 6241-42. Unfortunately, this left jurors with an understanding that character and propensity evidence consisted of "bad" facts, aggravating facts, about Ms. Holmes' character and propensities, not reduced moral culpability for which a sentence of life would be more appropriate.[21]

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[21] The prosecution repeatedly told jurors in voir dire that character and propensity evidence would constitute further aggravating evidence to be weighed in favor of death. "Remember, we said this is a big one. Character and propensities of the offender. Has the offender been convicted of a serious offense or committed another serious offense before?" R. 5220. *See also* R. 4633 (erroneously characterizing bad character evidence as aggravating circumstances and consisting of such things as criminal history while defining good character evidence as the defendant playing a lesser role in the crime).

The situation was identical in *Penry*. Given the Texas statute in Penry's case, the jury had likely considered mitigating evidence as aggravating evidence, without the benefit of an instruction directing them to consider evidence of mental retardation aggravating. As in *Penry*, Ms. Holmes' sentence of death must be set aside because it constitutes cruel, unusual, and excessive punishment.

V. THE DEATH SENTENCE IN THIS CASE IS DISPROPORTIONATE BECAUSE NO ONE ELSE WITH SUCH POWERFUL MITIGATING EVIDENCE HAS BEEN SENTENCED TO DEATH

Comparative proportionality review supports the conclusion that death is disproportionate in this case. As noted above, the analysis by the State in its SRM and by the Court in the UCSR failed to consider the powerful mitigating circumstances in reaching their conclusions and therefore failed to perform a critical function of the review.

A. The law requires that this court consider mitigating circumstances as an essential part of its proportionality review

The state's cursory discussion of proportionality focuses on the jury's finding that the homicide was committed in the course of an armed robbery or attempted armed robbery. The state cites prior cases

in which the death penalty has been returned in cases of armed robbery, implying that this Court has established a de facto rule that the death penalty is essentially always appropriate in an armed robbery case. The state's focus on the armed robbery aggravator subverts the statutory scheme and the constitutional rights it protects. First, it conflates the sufficiency of evidence review relating to aggravating circumstances, with the proportionality analysis. Proportionality is *not* limited to review of existence of aggravating circumstances. As the Court made clear long ago:

> Rule 28 of this court establishes a *three* step review for evaluating the appropriateness of a death sentence. The mere existence of a three step process indicates that a death sentence may be excessive *even if sufficient ground exists for each aggravating circumstance found by the jury.*

State v. Sonnier 380 So.2d 1, 7 (La. 1979) (*emphasis added*) (finding death sentence that was supported by six aggravating circumstances was excessive in light of the mitigating evidence). To automatically affirm the proportionality of the death sentence based on the existence of a particular aggravator, does violence to the statutorily prescribed procedures, and violates Due Process.

More importantly the refusal to even consider mitigating circumstances as part of a proportionality review would undermine the principals enforced by individualized sentencing just as the mandatory

death penalty does. "Comparative proportionality review by this court has focused principally on mitigating circumstances". *State v. Jones,* 474 So. 2d 919, 938 (La. 1985). No single factor can render the death penalty automatically appropriate. *See Woodson v. North Carolina,* 428 U.S. 280 (1976) (holding automatic imposition of death penalty for first degree murder unconstitutional); *Roberts v. Louisiana,* 428 U.S. 325 (1976) (same).

B. The greater number of first degree cases involving crimes of armed robbery have resulted in jurors rejecting death in favor of a life sentence

The state's argument is flawed because it ignores cases in which a life sentence was returned. Proportionality assessment requires a review of "similar cases" La. Sup. Ct. R. XXVIII which means, not just cases where the death penalty was returned, but also those in which it was not. To effectively limit the pool to death cases violates the spirit of the statute, and Due Process. Moreover, while death cases are crucial for providing data about what factors may make a case death worthy, it is the cases in which a life sentence has been returned that illuminate the factors present in cases where death was found to be inappropriate. It is a fallacy to argue that because there are cases with similar aggravating factors in which the death penalty returned, death in any case with those aggravating factors is

proportionate. Aggravating and circumstances must be viewed contextually with mitigating factors. This Court should not sanction the state's selective picking and choosing of cases and picking and choosing of comparison factors, to support an unwarranted finding of proportionality.

Moreover, the state's argument fails on its own data: in Caddo Parish there have been *eleven* first degree murder cases in which a *life* sentence was imposed where the jury found the crime to have been committed in the course of armed robbery. *State v. Donaldson,* 391 So.2d 1182 (La.1980); *State v. Washington,* 407 So.2d 1138 (La. 1981), *State v. Nicholson,* 437 So.2d 849 (La. 1983); *State v. Birdsong,* 452 So.2d 1236 (La.App.2d Cir. 1984); *State v. Brown,* 478 So.2d 600 (La.App.2d Cir. 1985); *State v. Calhoun,* 554 So.2d 127 (La. App.2d Cir. 1989), *writ den.* 558 So.2d 601; *State v. Haynes,* (La.App.2d Cir. 11/1/95), 662 So.2d 849, *writ den.* 95-2768 (La. 2/16/96), 667 So.2d 1050; *State Gay,* 29,434 (La.App.2d Cir. 6/18/97), 697 So.2sd 642; *State Tolbert,* 30, 821 (La.App.2d Cir. 8/19/98), 716 So.2d 949, *writ den.* 98-25262 (La. 1/15/99), 736 So.2d 207; *State v. Webb,* 32,607 (La.App.2d Cir. 1/26/00), 750 So.2d 479, *writ den.* 2000-0593 (La. 12/8/00), 775 So.2d 1078; *State v. Turner,* 37,162, (La.App.2d Cir. 10/29/03), 859 So.2d 911, *writ denied* 2003-3400 (La.3/26/04) 871 So.2d 347.

In contrast, only *ten* first degree murder cases with that aggravating circumstance resulted in a death sentence that was upheld by this Court after

proportionality review.[22] *State v. Glenn Ford* 489 So.2d 1250 (La. 1986); *cert. granted and remanded, Ford v. Louisiana,* 479 U.S. 1077, (1987); *on remand* 503 So.2d 1009 (La. 1987), *cert. denied, Ford v. Louisiana,* 498 U.S. 992 (1990); *State v. Nathaniel Code,* 627 So.2d 1373 (La. 1993); *State v. Percy Davis,* 92-1623, (La. 5/23/94), 637 So.2d 1012; *State v. Michael Cooks,* 97-0999 (La. 09/09/98), 720 So.2d 637; *State v. James Tyler III,* 97-0338 (La. 9/9/98), 723 So.2d 939; *State v. Bobby Hampton,* 98-0331 (La. 4/23/99), 750 So.2d 867; *State v. Cedric Edwards,* 97-1797 (La. 7/2/99); 750 So.2d 893; *State v. Daniel Irish,* 00-2086, (La. 01/15/02), 807 So.2d 208.

C. Ms. Holmes' case presents more substantial and compelling mitigation than any other Caddo Parish case resulting in a sentence of death

No defendant sentenced to death in Caddo parish had such strong mitigating evidence as Brandy Holmes:

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[22] Death was also imposed in the following cases but they have not been subject to proportionality review by this Court *State v. Darrell Draughn*; 05-1825, (pending appeal); *State v. Robert Coleman* 2006-0518 (La. 11/02/07) 2007 La. LEXIS 2392 (La. 2007), (conviction reversed on appeal) *rehearing denied* 1/7/08; *State v. Corey Williams* 2001-1650 (La. 11/01/02) 831 So. 2d 835 (remanded to trial court for determination of mental retardation claim, where found to be mentally retarded under *Atkins v. Virginia* and sentenced to life), *State v. Aaron Wilson* 2003-1229 (La. 3/30/05), 899 So. 2d 551 (remanded under *Roper v. Simmons* and sentenced to life).

1. Severe mental illness, including diagnoses of PTSD since age 12, resulting from a history of trauma
2. Prior diagnoses and treatment for psychosis
3. Brain damage and significant brain dysfunction in multiple areas (as a result of her mother's substance abuse during pregnancy
4. Profound learning disabilities identified from age 6
5. Low IQ, borderline intelligence
6. Alcohol and drug addiction, and possible intoxication at the time of the offense
7. Subjected as a child to neglect, violence, abuse, poverty, and raised by an alcoholic mother
5. Victim of sexual abuse
6. Significant doubt about her role in the crime including evidence implicating her co-defendant – lesser role

Importantly, Brandy's brain damage and dysfunction, history of abuse and neglect, history of mental illness (that was not by any means confined to childhood conduct disorders and Antisocial Personality Disorder), her borderline mentally retarded intellectual functioning, longstanding learning disabilities, and her emotional immaturity *were not contested by the prosecution*. The State's own evidence

in Coleman's trial implicated Coleman as the shooter and the trial prosecutor has acknowledged the undue influence Coleman may have had on Ms. Holmes.

None of the defendants receiving the death penalty had anything like the extent of mitigating evidence as in the current case. In both Glen Ford and Nathaniel Code's cases this Court found that there were no statutory mitigating circumstances present at all. *Ford*, 489 So.2d at 1264; *Code*, 627 So.2d at 1386. In the other death cases mitigating evidence was apparent from the record, but in every case it was more limited than in the current case, and/or the aggravating evidence was stronger. Percy Davis was convicted of two counts of first degree murder as well as an unadjudicated homicide. The record indicated he had cognitive impairments, low intellectual functioning, brain damage, and drug and alcohol addiction, but the record lacks the extensive evidence of mental illness, history of poverty, neglect and abuse, and lesser role/culpability which is present in the current case. *Davis*, 637 So.2d at 1029-1031.

Michael Cook's crime, like in Holmes case was a home invasion robbery, but there were two surviving victims, not one. In addition, Cooks had an extensive history of adult arrests for violent felonies, including aggravated assaults, attempted second degree murder, and was a heavily involved gang member for several years. Mitigating evidence in that case included his low IQ, special education history, that he was raised by an abusive mother in a violent family,

and had drink and drug involvement, but did not suffer the serious substance addiction, mental heath problems, and brain damage, that Ms. Holmes labors under. *Cooks*, 720 So.2d at 651-654.

James Tyler's crime involved three victims (two of whom survived). All three were shot cold bloodedly in the head at point blank range; evidence of an unadjudicated robbery shooting (attempted murder) was also introduced. Mitigating evidence involved mental health problems and a troubled childhood. Ms. Holmes suffered all that, but much more. In Tyler, there was no evidence of brain damage, brain dysfunction, low intellect, or addiction problems, or a lesser role/culpability. *Tyler*, 723 So.2d at 949-950.

Bobby Hampton, in addition to the capital armed robbery murder, had an extensive history of violent felony convictions and arrests, including for armed robbery, aggravated assault and attempted second degree murder. His mitigation was limited to the murder of his father, being a school drop out and church attendance, a far cry from the multiple statutory and non-statutory mitigation in Ms. Holmes' case. *Hampton,* 750 So.2d at 888-891.

Cedric Edwards who likewise was convicted and sentenced to death for a home invasion robbery involving harm to more than one person, also had a prior manslaughter conviction. Mitigating evidence in the record included alcohol and drug abuse, a learning disorder, and artistic talents, but the record does not indicate that as in Ms. Holmes case, he

endured any serious mental disorder, borderline mental retardation, brain damage, brain dysfunction, or an abusive childhood or had lesser culpability. *Edwards,* 750 So.2d at 912-915.

Daniel Irish's robbery murder was mitigated only by evidence of a dysfunctional upbringing; there was no suggestion of mental illness, low intellect, learning disorder, cognitive deficits, substance abuse problems, or that he had a lesser role in the crime. *Irish,* 807 So.2d at 215-217.

In *none* of these death cases was there doubt as to the primary role that the defendant played in the crime. Except in Bobby Hampton's case there was no question that the defendant was the shooter. Even in Hampton this Court found he was the ring leader, and there was certainly no evidence in the record that he was dominated or influenced by an abusive, stronger, violent man. In contrast that is a factor that appears time and again in the life cases, as it does in Ms Holmes case. Corey Williams and Aaron Wilson's cases were remanded by this Court under *Atkins v. Virginia* and *Simmons* respectively; mental retardation and youth alone rendered death inappropriate in these cases *regardless* of the heinousness of the crime. In fact in both cases there were questions concerning the defendant's role in the crime and their manipulation by others (in *Williams* the co-defendant was the ring-leader for the robbery and put the gun in Williams' hands; in *Wilson* the identify of the shooter was disputed by *Wilson* who although having confessed to being the shooter, later gave evidence

that he false confessed being in fear of reprisals from the real shooter. This underscores the heavily mitigating nature of their disabilities arising from an undeveloped or impaired brain limiting capacity by reason of youth or and mental retardation, and the vulnerabilities they face in the justice system as a result.

D. The mitigation presented in Ms. Holmes' case more closely resembles mitigation in cases resulting in a life sentence, even when the heinousness of the crime is taken into account

Almost all of the cases where a life sentence was returned in armed robbery murders in Caddo Parish, contained the very mitigating circumstances present in Ms. Holmes' case. The most common mitigation themes identified in the life cases are that there was some doubt as to the role or culpability of the defendant, whether because of the possibility another perpetrator was more culpable (*Washington, Brown, Webb*), or there were questions about specific intent (*Calhoon, Haynes*); the defendant's mental illness Washington, (diminished mental capacity); *Birdsong Jr* (mental illness); substance abuse/intoxication; *Calhoon* (drug and alcohol use) *Gay* (intoxication and drug addiction); or the defendants borderline intelligence *Tolbert* (borderline intelligence), Brandy Holmes case included all of these factors and *any many more.*

Neither can the life cases be distinguished because the crimes were less aggravated; on the contrary, they include cold-blooded and heinous crimes; *Donaldson* (home invasion robbery of 80 year old woman, in the course of aggravated burglary, the victim was stabbed); *Nicholson* (victim stabbed 39 times); *Birdsong Jr.* (shot victim in cooler and again to make sure he was dead); *Brown* (car-jacking, aggravated kidnapping robbery, stabbed 35 times, nearly decapitated, body disposed in pond and car burned); *Turner* (robbery murder, killing one and leaving another paralyzed); *Haynes* (robbery, rape, and stabbing of LSU student who was pushed to her death off a building); *Tolbert* (shooting which killed one and left another paraplegic who died a year after trial); *Webb* (tortured and stabbed victim who gave defendant a ride);

This Court's own precedent confirms that Brandy Holmes' death sentence is disproportionate. *State v. Sonnier*, 380 So. 2d 1 (La. 1979) was a robbery murder, involving *six* aggravating circumstances; the Court held that the death sentence was excessive because of the overwhelming amount of mitigation in the record of that case. It found that the mitigating circumstances of youth, an excitable disposition, little education, acting under the influence of an older brother, and a smaller role in the crime sufficiently established the case against death and rendered the sentence of death unconstitutionally excessive. *Id.* at 8-9. In Holmes' the crime is less heinous, there are

fewer aggravating circumstances and wealth more mitigating evidence.

As in *Sonnier* "imposition of the death penalty in this case but not in the other cases suggests that the penalty is being applied in the "freakish" and "wanton." manner reprobated by the United States Supreme Court in *Furman v. Georgia,* 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972). Therefore, under this test, the penalty is excessive within the meaning of Article 905.9 of the Code of Criminal Procedure." Her death sentence is unconstitutionally excessive, and should be reversed.

E. The death penalty is excessive for a woman with the mitigating circumstances in Ms. Holmes' case

The death sentence in this case is also excessive and disproportionate as applied to Ms. Holmes because she is a woman who committed the crime under the influence and domination of an abusive man. There is a wide societal consensus against executing women. As Justice Marshall noted in *Furman v. Georgia*, 408 U.S. 238, 295 (1972), "[t]here is . . . overwhelming evidence that the death penalty is employed against men and not women. Only 32 women have been executed since 1930, while 3,827 men have met a similar fate." *Furman*, 408 U.S. at 365. Recent research and studies continue to confirm that women are rarely sentenced to death, and that actors at all levels of the judicial system are reluctant to

criminalize, prosecute and sentence women at the capital level. *See, e.g.*, Janice L. Kopek, *Avoiding a Death Sentence in the American Legal System: Get a Woman to Do It*, 15 Cap. Def. J. 353 (2003);[23] Andrea Shapiro, *Unequal Before The Law: Men, Women And The Death Penalty*, 8 Am. U.J. Gender Soc. Pol'y & L. 427 (2000); Victor L. Streib, *Women As Perpetrators*

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[23] "About 20,000 executions have taken place in the United States during the last four centuries; of these, only 562 involved female defendants. Even when the death penalty was a much more common punishment, women faced it less often and for fewer crimes than men. In early America, men were executed for stealing, but women were almost exclusively executed for homicide or witchcraft. Forty-seven percent of the total number of American women who have been executed were African-American, and a large portion of these women were slaves executed in the eighteenth and nineteenth centuries. Traditionally, society shields women from harsher penalties in much the same way that it exempts them from military danger. The notions of chivalry loom large when considering the life and death of a woman, and these notions have not faded in the modern era. As capital punishment entered the twentieth century, the incidents of female executions decreased even further. Only one woman in the twentieth century was executed for any crime other than homicide, whereas men were executed for other crimes until mid-century. Thousands of men have been executed in the last one hundred years, but only forty-nine women have suffered the same fate. In the modern era of the death penalty, 1976 until the present day, this disparity has continued; only ten women have been executed compared with 829 men. Currently, women commit about one in every eight homicides, but they are represented in less than one in every eighty executions. This fact illustrates that men are not simply more violent and therefore executed with greater frequency; even when women do act violently they disproportionately avoid execution." 15 Cap. Def. J. 353, 354.

Of Crime: Rare And Inconsistent: The Death Penalty For Women, 33 Fordham Urb. L.J. 609 (2006).

The consensus against executing women, clearly applies throughout Louisiana in general and in Caddo Parish in particular; only three women have been put to death in Louisiana in the past one hundred years, all of them prior to 1976: Ada LeBoeuf in 1929, Julia Moore (aka Powers, Williams) in 1935, and Toni Jo Henry in 1942. Catherine Dodds was also sentenced to death, but her sentence was reversed in 1976. No female has been sentenced to death in Caddo parish in the modern death penalty era; and only one other woman has received a death sentence in the entire state (Antoinette Frank, sentenced to death in 1995); none have been executed. Given the clear consensus against executing female offenders, Ms. Holmes death sentence violates the Eighth Amendment prohibition against cruel and unusual punishment, and Louisiana's constitutional prohibition against cruel, excessive and unusual punishment under Louisiana Constitution, Art 1, § 20.

In addition, given the clear gender disparity in the application of the death penalty, a fair proportionality review entailing a comparison to "similar cases" must include a comparison to other *female* capital defendants. There is no question that the mitigation in Ms. Holmes' case far outweighs that in Antoinette Frank's case. The Court noted that the defense at *Frank's* trial argued in mitigation that defendant had no significant criminal history; that the offense was committed while defendant was under the influence

of extreme mental or emotional distress; that the defendant was a young offender under the influence or domination of another; and that she was a principal whose participation was relatively minor. However, at most the review in *Frank* reveals possible physical, sexual and emotional abuse, a possible diagnosis of PTSD, and possible negative consequences of having been raised by a mentally ill parent. Notably these factors were identified as only potential mitigators in the dissenting opinion on an *Ake* claim; no mitigating factors whatsoever are identified in the proportionality review. *State v. Frank* 1999-0553 (La. 05/22/07); 957 So. 2d 724, 746-757. There is certainly no suggestion of psychosis, brain damage, learning disability, fetal alcohol syndrome, substance dependency, or low intelligence/ borderline retardation. Moreover, *Frank's* crime was more aggravated; she was convicted of *three* counts of first degree murder and received *three* death sentences, for the execution killing of a police officer and two restaurant workers in the course of an armed robbery, exploiting her position and violating her oath as a police officer in committing the crime.

Even if death is not per se excessive and disproportionate simply because Ms. Holmes is a woman, it certainly is so when it involves a murder committed under the domination of an abusive man. The record in Ms. Holmes' case supports that she was under the influence of Robert Coleman, her domineering, violent and abusive boyfriend, during the commission of the crime. *See supra*, at 12. The law has repeatedly

been asked to recognize that under such circumstances, women should be treated more leniently:

> Women who have been battered by their husbands, lovers, and companions understandably have received an outpouring of concern. The criminal justice system has been encouraged to protect these women more completely and to punish their batterers more aggressively. When the system fails and these women kill their batterers or others, law is asked to stretch and bend to allow expanded defense theories ranging in effect from reducing the seriousness of the crime to complete exoneration.

Victor L. Streib, *Symposium: Death Penalty for Battered Women*, 20 Fl St. U.L. Rev. 163 (1992). When the ultimate penalty is at stake, women should be exempted from death altogether. *Id.* at 190-91.

Ms Holmes' death sentence is excessive, disproportionate, and must be reversed.

VI. MS. HOLMES DEATH SENTENCE WAS IMPOSED UNDER THE INFLUENCE OF PASSION, PREJUDICE, AND ARBITRARY FACTORS

The jury's deliberations in the penalty phase were infected by a mass of legally irrelevant, improperly admitted and highly prejudicial evidence.

The prosecution introduced excessive amounts of victim impact evidence which far exceeded the

permissible limits set out by this court in *State v. Bernard*, 608 So. 2d 966 (La. 1992). The victim's daughters narrated extremely detailed information about the life of the victim, Julian Brandon, including improper victim worth evidence concerning his status and good works in the community as a Baptist minister. The state also presented victim impact evidence concerning the effects on the attack on Ms. Brandon, economic harm, victim impact of the homicide of Terrance Blaze; none of which are authorized by the sentencing statutes or legally relevant. The testimony and evidence concerning Alice Brandon were particularly graphic, detailed and prejudicial; the state presented a video tape of a day in the life of Alice Brandon, depicting her struggling to breathe, talk, and function in daily life. Her daughter's testimony provided a detailed accompanying narrative. Counsel is aware of no other capital case in this state in which anything like this amount of victim impact evidence was been admitted, stripping *Bernard* of any meaning if it is upheld.

In addition the state was permitted to present a wealth of prejudicial and inadmissible "other crimes" evidence. In its case in chief the state presented evidence of the unadjudicated homicide of Terrance Blaze, and the attempted murder of Patricia Camp. As in the Brandon homicide, the only evidence of Brandy Holmes' involvement in Terrance Blaze's homicide was her unreliable contradictory statements and the only physical evidence linking anyone to the shooting, implicated Robert Coleman. In respect of

the Patricia Camp incident there was little evidence of criminal wrong doing at all and absolutely no evidence of a violent felony. the only type of crime admissible under *Jackson*.

The State continued to present prejudicial other crimes evidence during the defense case. The prosecution improperly elicited inadmissible, unreliable, uncorroborated evidence of numerous bad acts allegedly committed by Brandy Holmes including her participation in drive by shootings and other gang-related activity, that she killed a kitten, assaulted guards, attempted to escape and committed numerous burglaries. This evidence was elicited by the state under the guise of cross-examining defense expert, Dr. Vigen concerning the contents of Brandy Holmes' juvenile records. However, those records were entirely irrelevant to his opinion concerning the results of the pretrial neuro-psychological testing he had performed for the defense, the sole reason for which he was called to testify. Many incidents the prosecution cited Dr. Vigen did not recall at all, and others the State didn't even bother to find out.

More importantly, that evidence was prohibited by *State v. Jackson*, 608 So. 2d 949, (La. 1992). The evidence violated *Jackson* (and the constitutional rights *Jackson* protects) either because it was not serious enough (non-violent, or not a felony) and was therefore legally irrelevant, or it was unsupported by evidence. Indeed a close review of the juvenile records shows that the most prejudicial evidence (including the drive by shootings and cruelty to animals), came

from entirely uncorroborated self-reports made by Brandy Holmes to psychologists in juvenile institutions, when it was well known that Brandy confabulated, exaggerated and frequently confessed to things that never occurred or reported things that never happened.[24] Yet the jury never knew this; the state selectively recited the most prejudicial sounding parts of the records, regardless of their true worth in order to inflame the jury and obtain a death sentence.

The details of the victim impact and "other crimes" evidence, the problems surrounding its admission into evidence, and the state's improper arguments concerning them, are laid out more fully at Claims VIII, IX, XII and XV of *Appellant's Brief*.

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[24] Her juvenile records demonstrate her long history of confabulating. A 1998 record shows: "she claimed that when she was 9 years old, her brother was initiating her into a gang and picked out a house in which she was to go into the house and shoot everyone in it. She reported that she shot and killed two adult males in the house but left a woman and a baby alive. She was never charged with this crime." *Id.* at 2099. At various time she has also reported: that she shot her Uncle in the leg at the age of nine, R. 2348, CD of Juvenile Records at 2849-56, that she shot her step-father with an Uzi, *id.* At 260-62, that she was convicted of first-degree murder at age nine in California where she was incarcerated but escaped and went to live with her mother in Shreveport. *Id.* at 2845. The records show Brandy Holmes had also lied to a counselor about several things such as her sister being shot and her grandmother's home being shot up during a drive by shooting, *id.* at 340, that she falsely reported having a brother named Steven Smith who was killed in a shooting. *Id.* at 1251. Ms. Holmes mother reported that after she remarried Brandy began to "make up elaborate stories and lie frequently." *Id.* at 33-45.

As well as injecting prejudicial evidence *into* the case the state also impermissibly interfered with the jurors' proper consideration of constitutionally relevant evidence in mitigation. Their misconduct included: arguing that jurors should not consider Ms. Holmes mental impairments resulting from fetal alcohol syndrome, as mitigating, R.6212, 6217; arguing that the only mitigating evidence presented by the defense was fetal alcohol syndrome, R. 6213; arguing that the defense's presentation of mitigation evidence and argument was an improper attempt to incite a verdict based on irrational emotional grounds, in violation of the law, R. 6231; arguing that evidence wasn't mitigating unless it "excused" the crime, R.6211-6212, 6215, 6233; arguing that mental health evidence was not mitigating unless it reached the level of insanity, R. 621); arguing that the heinousness of the offense required an automatic death sentence, R.5908; and arguing that the rape and sexual abuse of Ms. Holmes when she was twelve was not mitigating because it was "consensual" R.6234. *See, Ward v. Whitley*, 21 F.3d 1355, 1364 (5th Cir. 1994) (prosecutor may not argue that statutory mitigating factor should not be considered or is not mitigating), *cert. denied*, 513 U.S. 1192 (1995).

In addition state's misconduct at the guilt/innocence phase of her trial prejudiced the juror's penalty phase deliberations, injecting further arbitrary factors into their determination of sentence. The state: repeatedly showed prejudicial, graphic crime scene

and autopsy photos and crime scene video to the jury, often-times projecting them on the wall to inflame the jury even more, R.5355, 5769, 5370-5374 5374, 5424-5425, 5527-5528, 5627-5629, 5643-5647, 5724-5737, 5749-5763, 5778-5779; argued about the details of the crime and the Brandons' injuries in graphic and inflammatory ways, R. 5301-5304, 5778-5779, 5783-5784, 5787; and repeatedly questioned numerous witnesses about such details, R. 5356-5358, 5362-5365, 5370-5397, 5529-5235, 5629-5637, 5643-5647, 5724-5737, 5749-5763; argued about Ms. Holmes character and motivations in a speculative, inflammatory ways, R.5304-5305, 5313, 5336, 5779-5781, 5784-5786; and argued that the defense concession to second degree murder removed the jury's option to return a verdict of lesser included offenses. R.5769.

Individually and collectively this evidence and misconduct injected arbitrary and prejudicial factors into the jury's deliberations and as a consequence "the sentence was imposed under the influence of passion, prejudice or any other arbitrary factors", in violation of Ms. Holmes federal and state constitutional rights. Ms. Holmes death sentence should be reversed.

VII. THE DEATH PENALTY IMPOSED IN THIS CASE IS ITSELF AN UNCONSTITUTIONALLY CRUEL, UNUSUAL AND DEGRADING PUNISHMENT

Ms. Holmes was sentenced to death "by lethal injection."[25] Louisiana's lethal injection procedures are unconstitutional and violate both the Eighth Amendment's proscription against cruel and unusual punishment, and the prohibition in Article I, Section 20 of the Louisiana Constitution, against cruel, unusual or excessive punishment, and euthanasia. The three-chemical cocktail used in lethal injection may fail to sufficiently anesthetize the recipient and at the same time paralyze and prevent the recipient from alerting the authorities to take remedial action. In addition the procedures and protocols otherwise provide inadequate safeguards against mistakes and malfunctioning of equipment; inadequate monitoring of the defendant's physical condition, and thereby result in unnecessary pain and suffering and/or an unreasonable risk of such occurring. A punishment is particularly constitutionally offensive if it involves the foreseeable infliction of suffering. *Furman v. Georgia*, 408 U.S. 238, 273 (1973), *citing Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463 (1947) (had failed execution been intentional and not unforeseen, punishment would have been, like torture, "so degrading and indecent as to amount to a refusal to accord the criminal human status").

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[25] [I]t will be the sentence of the Court, in accordance with recommendation of the jury, that Ms. Holmes be sentenced to death by lethal injection." R. 6270-6271.

Both due process and Louisiana's sentencing statute require that Ms. Holmes be sentenced within a reasonable time to a constitutional punishment. La. C Cr Pr. Art 874 provides: "Sentence *shall* be imposed without unreasonable delay" (emphasis added). This Court should set aside her sentence of death and enter the only constitutional sentence: life.[26]

Respectfully Submitted,

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[26] La. C.Cr.P Art 882(A) clearly gives this Court the authority to correct an illegal sentence "An illegal sentence may be reviewed as to its legality on the application of the defendant or of the state; (1) In an appealable case by appeal". *And see*; La.C.Cr.P Art 874 which provides "If a defendant claims that the sentence has been unreasonably delayed, he may invoke the supervisory jurisdiction of the appellate court."

CERTIFICATE OF SERVICE

I hereby certify that this document was sent by first class mail, postage pre-paid, on this 25th day of February, 2008, upon

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